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## **Legislative Assembly of Ontario**

First Session, 37<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Première session, 37<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

Thursday 4 November 1999

# **Journal des débats (Hansard)**

Jeudi 4 novembre 1999

**Standing committee  
on the Legislative Assembly**

Organization

**Comité permanent  
de l'Assemblée législative**

Organisation

Chair: R. Gary Stewart  
Clerk: Donna Bryce

Président : R. Gary Stewart  
Greffière : Donna Bryce



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE  
ON THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT  
DE L'ASSEMBLÉE LÉGISLATIVE

Thursday 4 November 1999

Jeudi 4 novembre 1999

*The committee met at 1540 in committee room 1.*

## ELECTION OF CHAIR

**Clerk of the Committee (Ms Donna Bryce):** Good afternoon, honourable members. It's my duty to call upon you to elect a Chair today. Are there any nominations?

**Mr Wayne Wettlaufer (Kitchener Centre):** I'd like to nominate Gary Stewart as Chair.

**Clerk of the Committee:** Are there any further nominations? Seeing none, I declare the nominations closed and Mr Stewart elected Chair.

## ELECTION OF VICE-CHAIR

**Clerk of the Committee:** Next, since Mr Stewart is not here today, we'll go to the election of the Vice-Chair. Are there any nominations for that position?

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** I nominate Brad Clark for Vice-Chair.

**Clerk of the Committee:** Are there any further nominations? I therefore declare the nominations closed and Mr Clark elected Vice-Chair.

Congratulations, Mr Clark. Could you come and take a seat.

## APPOINTMENT OF SUBCOMMITTEE

**The Vice-Chair (Mr Brad Clark):** Is there a mover for the motion to appoint a business subcommittee?

**Mr George Smitherman (Toronto Centre-Rosedale):** There is.

I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on the business of the committee; that the presence of all members of the subcommittee is necessary to constitute a meeting and that the subcommittee be composed of the following members: Mr Stewart, Mr Tascona, Mr Lalonde and Ms Churley; and that any member may designate a substitute member on the subcommittee who is of the same recognized party.

**The Vice-Chair:** Is there any discussion on the motion? All those in favour? Any opposed? Carried.

## APPOINTMENT OF OMBUDSMAN

**The Vice-Chair:** Members will know that the House has referred the matter of the appointment of the Ontario Ombudsman to this committee, and we have been authorized to report to the House our recommended candidate. May I suggest that in order to deal with the process, a meeting of the subcommittee be convened, and once the subcommittee has made recommendations, then they will be presented to this full committee for approval.

**Ms Frances Lankin (Beaches-East York):** I'm hopeful that members of the committee, the Vice-Chair in particular, have been made aware that there have been discussions with respect to the possibility of reopening the advertisement period for the position of Ombudsman which have taken place at the House leaders' meeting. That discussion rightly belongs here at this committee, and I'm hoping we can begin that discussion today.

If I could give the committee a bit of background, I understand there is someone present from the Legislative Assembly's human resources department who can present us with some information about the posting, the period of advertising and the possibilities and options for reopening. I would ask them to come forward at an appropriate time and provide us with that information.

Committee members may or may not know that in September there were discussions between the three parties about the process to be utilized in the selection and appointment of the new Ombudsman. These discussions extended also to the position of Environmental Commissioner, but that's before another committee and is not relevant to our discussions here today.

In the discussions at that point in time, the request from the government House leader was that there be a three-party committee appointed that would comprise one representative from each party. The hope, I think, on the part of the government at the time was to expedite the process of appointing these positions and, relevant to us, the Ombudsman's position, and that in an expeditious process we would have somebody in place before the appointment ran out.

We agreed to that proposal, as did the official opposition. As part of those discussions, we agreed at that time to an expedited process of advertising the position. The position was advertised in major newspapers I believe around September 22 or so, and it was for a two-week period. There are precedents in the past for major



positions where parties have decided that it could be longer than two weeks, and I think there are precedents for three- and four-week postings at different times.

The reason we agreed to this process was (1) because of the structure of the committee that had been proposed: one member from each party. It provided us with a different opportunity of collaboration and co-operation in the appointment of a position responsible to all members of the Legislative Assembly, an important position from the perspective of all three parties; and (2) because of the impending term of office of the existing Ombudsman coming to a close, in the hope that we would be able to have someone in place prior to that.

After that agreement had been arrived at, there was a change of heart on the part of the government and there was a decision that the process of selection would be referred to this particular standing committee. As you know, it's composed in a different way, and there is not necessarily a different outcome but the possibility of a different outcome.

In the usual course, there is an important role for members of the Legislative Assembly in being aware of the possibility of these appointments in facilitating outreach with respect to people in our various communities who may be interested candidates that would be above and beyond the role of simply placing ads in major newspapers, because we know this is not right across the province when you advertise. We believe, now that both the conditions of the committee have changed and that there has been a step to appoint an interim Ombudsman, there has been a little bit of pressure taken off in terms of the time frame we were dealing with.

We would like to explore with members of the committee the possibility of reopening the advertising for another period of time—not in any way trying to delay this. We don't want to see this being drawn out, but we are trying to provide members of the Legislative Assembly, now that we are all back here and focused on work of the assembly itself, with the opportunity to play a role, along with advertising, in outreach to possible candidates.

As I indicated at the beginning, I believe through the meeting of House leaders and communications with the Clerk's office, there has been provided to this committee an opportunity to hear from a representative from the Legislative Assembly human resources committee about what that kind of request would entail and what the options might be. I would hope there would be an interest at least in exploring it, not taking a long time today, but at least in exploring that.

**The Vice-Chair:** Is there agreement to go into closed session to hear from the legislative staff?

**Mr Wettlaufer:** Coming from a business background—I never can seem to get around that—this would seem to me to be a very extraordinary request, unless those who have already submitted their applications for the position are not satisfactory, firstly; or secondly, that we didn't receive any submissions of application for the position.

In the event that those two criteria are missing, I would say that the position had been advertised in the national news media and it would be most unfair to those who have already applied on time to extend the application period, and politically it would appear as though this government is not satisfied with the applicants who have submitted their applications and that we really want someone of our choosing. I would feel very uncomfortable with that one and I have some question in my mind as to whether we would be leaving ourselves open for a lawsuit.

**The Vice-Chair:** If I may, we seem to be getting into some discussion that might be more appropriate in closed session, considering we're talking about the process.

**Ms Lankin:** On that point, I'd like to have an opportunity to respond and to assure Mr Wettlaufer of the reason, again, for our concern, but I don't see the appropriateness of going into closed session when we're talking about the process. I think the process is one that should be open. We're not talking about any individuals and/or making a decision around selection. I think we're talking about process, and that is a matter of open and public record.

1550

**The Vice-Chair:** Then I would just ask us to govern ourselves cautiously, because we are talking about a process that has already been set out and we don't want to have it come up into any type of question at a later date.

**Ms Lankin:** If I may continue then, just to respond to the concerns that Mr Wettlaufer raised, I am not without sympathy; I understand them. But I draw your attention again to the fact that the agreement that was arrived at was in two parts, the first part being the composition of the selection committee and the expressed desire on the part of the government to have a candidate in place in an expeditious fashion, not to go the route of appointing an interim but to move directly into advertising. The second part of that was the short advertising period, which we agreed to in the context of the whole package of agreements.

Two things have changed. The composition of the committee that had been agreed to has now been changed by a government decision and, secondly, there has been a decision to appoint an interim Ombudsman, so the time pressure that the government was working to and convinced us to agree to, the two-week advertising, now has changed.

While I'm sympathetic to what you're saying, I think the very fact that it is a member of the opposition who is requesting a longer period of time of advertising would contribute to alleviating your concerns that the government would be held to some standard of not finding the existing candidates satisfactory or looking to appoint their own.

Secondly, I think the higher principle of openness and of full participation of members of the Legislative Assembly—after all, the Ombudsman is responsible to this assembly—and the opportunity for us to participate



in outreach to people in our constituency to let them know about this, to enhance the process of the advertising period, is one that would have been a normal practice had we not attempted to facilitate the government's request of doing this before the Legislature came back. In any other course of action, had it gone through the normal process of being submitted to this committee, this committee would have decided the terms of reference for the advertising, the length of advertising, all of those sorts of things. We'd be doing that now, we'd all be engaged in that, and other members of the assembly would be aware of it.

I'm asking, given the changed circumstances, that this committee take a second look at the possibility of opening the advertising again. I would like to say that there is someone here from human resources who could provide us with some background about the options to do that, and the committee could take that information into consideration in its deliberations and decisions with respect to my request.

**Mr Jean-Marc Lalonde (Glengarry-Prescott-Russell):** In the past, the first meeting was just called to elect a Chair, Vice-Chair and the subcommittee. I know this issue is very important, but at this time I don't think we should go on any further but bring it back at the first regular meeting that we are going to have.

I would move at this point that this subject be brought up at that first meeting.

**The Vice-Chair:** Mr Lalonde has asked that we bring this back to the next regular meeting. Is there discussion on that?

**Ms Lankin:** I would have to vote against that. I think it would be inappropriate to delay consideration of this. As I indicated earlier, it is not our intent to delay this process. House leaders have had this discussion. I believe at least one member of each caucus should have been made aware of this by their House leader. It was through the House leaders that it was referred to us here to deal with.

I would think we all share the goal of the government in terms of having a process which, while it is open and fair and reaches the greatest number of Ontarians as is possible, is also expeditious. Unless as a committee once we've heard the information we feel that we are unable to make a decision, we feel that we need to seek further information, I wouldn't want to be a party to a motion simply to delay the process at this time.

**The Vice-Chair:** Mr Spina.

**Mr Joseph Spina (Brampton Centre):** Thank you, Chair, and congratulations.

**The Vice-Chair:** Thanks.

**Mr Spina:** You think.

I can appreciate, I think, the position that Ms Lankin is making, but I know that if I was a regular standing member of this committee, which I'm substituted on for today, I would want more background on this process to be provided to the committee members before they sat, by the HR person, rather than dropping the HR person on us and suddenly ending up in a cross-examination kind of

situation. I think if some background were provided to the committee in advance, then it can discuss it in a fair and equitable manner.

I would, based on that, concur with M. Lalonde's motion, but majority of course would rule.

**Mr Wettlaufer:** I would recommend that we hear from human resources. I believe we can get the necessary background right here today and we can make a decision today.

**The Vice-Chair:** We still have the motion for Mr Lalonde to deal with first. Any other discussion on that?

**Mr Wettlaufer:** Put the question.

**The Vice-Chair:** Call the question? All in favour of calling the question? All opposed?

**Mr Spina:** Are you talking about M. Lalonde's motion?

**The Vice-Chair:** Calling the question is in favour of putting the question forward right now, so that's what we're talking about.

**Ms Lankin:** And voting in favour of ending debate.

**The Vice-Chair:** So all in favour of calling the question? In other words, you're ending debate on the question.

**Mr Wettlaufer:** We're ending debate on the question?

**The Vice-Chair:** We're ending debate on the question that Mr Lalonde has asked—

**Ms Lankin:** Wayne, vote yes. Trust me.

**Mr Wettlaufer:** That's not the motion.

**The Vice-Chair:** It's not the motion. You're simply ending debate so that we can call the question.

**Mr Wettlaufer:** All right.

**The Vice-Chair:** All those in favour? Anyone opposed? OK.

Now we call the question itself. Mr Lalonde would want us to bring this issue back to the next scheduled meeting of this committee.

All those in favour of that motion? All those opposed to that motion? The motion is defeated.

**Mr Wettlaufer:** I would recommend that we hear from human resources presently.

**The Vice-Chair:** Is there agreement from the committee to do that? OK. We're going to recess for two minutes and then go into closed session to hear from human resources.

**Ms Lankin:** Could I ask why we're going into closed session? Again, we're talking about the process, options for advertising. I think that if we are going to go into closed session, it would probably require a motion. I, myself, don't see the need for that.

**The Vice-Chair:** It's up to the committee, but from my side, in terms of recommending it to the committee, we're going to be dealing with the process itself, specifics coming from human resources, and since this entire matter might come into question and there could be some issue of legality down the road or potential litigation down the road—we don't know—I'd rather hear from human resources in closed session.



It's up to the committee. Is there agreement from the committee?

**Mr Wettlaufer:** I support the recommendation of the Chair.

**Ms Lankin:** I'm sorry. I'm not in agreement with that.

**The Vice-Chair:** Does anyone wish to put a motion that we go into closed session, then?

**Mr Wettlaufer:** So moved.

**The Vice-Chair:** All in favour of that motion to go into closed session? All opposed? The motion is lost. We'll stay in open session and hear from human resources. And that would be whom?

**Ms Sylvia Nemanic:** My name is Sylvia Nemanic.

**The Vice-Chair:** Sylvia. I'm not even going to try on your last name. I'm sorry.

**Mr Spina:** Mr Chair, I thought you were going to recess for two minutes.

**The Vice-Chair:** That was only if we were going into closed session.

**Ms Nemanic:** An ad was placed in the Globe and Mail on September 22, 24 and 27, with a closing date of October 6. So it was a two-week period.

We have received 86 applications: 82 from residents of Ontario and four from out of province. Four were late applications and were not accepted. That has been our practice.

1600

**The Vice-Chair:** I'm sorry. How many were late?

**Ms Nemanic:** Four.

**The Vice-Chair:** Thank you.

**Ms Nemanic:** Would you like me to respond to the question of re-advertising?

**The Vice-Chair:** Please.

**Ms Lankin:** Particularly, if the committee decided that was the way it would want to go, what options we would have.

**Ms Nemanic:** If the committee decides to go that route, which I don't recommend—I think it jeopardizes the integrity of the recruitment process; it calls it into question. However, if the committee does decide to do this, we would have to advise the applicants who have already applied that it will be re-advertised and that their application would stand. In fairness, we would also have to accept the four late applications and I think applicants would be requesting information as to why it was re-advertised.

**Mr Tascona:** Are there any legal consequences of re-opening the application process?

**Ms Nemanic:** I think we could be open to court challenges. The individuals who have applied did so in good faith. There was a time period of two weeks allotted and I think those applicants would wonder why they are not the only ones competing now. There would be a bigger pool of individuals who certainly have the same opportunities as they did to apply by October 6. So I think it opens us up to court challenges.

**Mr Tascona:** I didn't see the wording on the advertisement, but was the wording that there was a firm deadline? How was it presented?

**Ms Nemanic:** The ad does say to apply by October 6. It is a firm deadline.

**Mr Tascona:** Did it say that there would be no applications received after that date?

**Ms Nemanic:** No, but that's understood in lots of advertisements.

**Mr Tascona:** That's fine, thanks.

**Mr Lalonde:** Sorry, the sound system wasn't working at the beginning and I didn't hear what you were saying. Did you say that we have received a number of applications prior to the deadline?

**Ms Nemanic:** Yes, we have.

**Mr Lalonde:** How many have we received?

**Ms Nemanic:** We have received 86 applications.

**Mr Lalonde:** And four of them were late.

**Ms Nemanic:** Yes.

**Mr Lalonde:** Why should we go back and publicize or reinstate the people to apply, then?

**Ms Lankin:** I don't think you can ask Sylvia that; you have to ask me that.

**Mr Lalonde:** Ask who?

**Ms Lankin:** You have to ask me that. I'm the one making the case, not Sylvia.

**Mr Lalonde:** Is it because no one qualifies for the job? Usually, when you re-advertise it's because no one has qualified for the position. I used to be in human resources and I can tell you that there's no way we could invite or publish again unless we didn't have anyone qualifying for the job. This is why I'm asking, why should we go back?

**The Vice-Chair:** Yes, I understand. Sylvia is simply telling us the facts as they are. Mr Smitherman, you're next, please.

**Mr Smitherman:** I have two questions. The position that we're talking about is a very specialized one and it's very significant in the operation of this place. Is two weeks a standard response time or was this an expedited process?

**Ms Nemanic:** It's an average process. There certainly have been longer time periods but two weeks is average.

**Mr Smitherman:** So you sometimes have one week?

**Ms Nemanic:** No.

**Mr Smitherman:** So it's not average, then.

**Ms Nemanic:** Well, two weeks is a minimum. We have had longer time periods. For instance, if there's a position that was advertised in the summer and we know there's a certain time period when individuals are on vacation, it may be advertised for three weeks. It depends on the position, but two weeks is normal.

**Mr Smitherman:** What can you tell me about the status of sort of analyzing the respondents that have come in? I note your strong view with respect to the difficulties of the perception, but set that aside just for a second; we're all going to be very conscious of that, I think. What's the status of the analysis in terms of qualifications of those 86 respondents?

**Mr Spina:** A point of order.

**The Vice-Chair:** We're getting into more specifics of individual applications.



**Mr Smitherman:** This is entirely a process question. I'm not wanting to know whether you have found a candidate who is suitable. I'm wondering, at what stage in the process is the analysis of the group of people who have responded? At what stage in the process is the status of the applications?

**The Vice-Chair:** Mr Smitherman, the actual process is that the applications would be coming to the subcommittee and then, with recommendations, to this committee. Human resources would not be dealing with that. They just hand over to the subcommittee.

**Ms Lankin:** Actually, I think there is a process of screening of applicants, and I think Mr Smitherman is asking just where in that process the human resources department is. There is a role that they play before it comes to the committee.

**The Vice-Chair:** OK. Thank you.

**Ms Nemanic:** We have developed proposed screening criteria for the committee to review and we have done an initial screening based on that, if the committee so agrees with it.

**Mr Smitherman:** Would you say that a characterization of "preliminary" would be appropriate?

**Ms Nemanic:** Yes.

**The Vice-Chair:** If I may, the preliminary screening of those would still come to the subcommittee?

**Ms Nemanic:** Absolutely. Yes.

**The Vice-Chair:** With your screening criteria, to the subcommittee?

**Ms Nemanic:** Yes, absolutely.

**The Vice-Chair:** So they would still go to the subcommittee?

**Ms Nemanic:** Yes.

**Ms Lankin:** If I could just elaborate on that, if the subcommittee returns the criteria to the human resources department with a change, for example, they would have to conduct the screening process again—the pre-screening, let me say. So it is very much preliminary and there is still an opportunity to affect that process.

Just a couple of quick questions. You said you think the applicants would wonder why. The committee, if it makes a decision, has reasons that would be set out. With respect to the Legislative Assembly and with respect to a position that is being appointed that is responsible to the Legislative Assembly—and the members herein comprise the Legislative Assembly—surely the normal process, which is that the committee makes a decision with respect to the period of advertising, which wasn't followed in this case, and the fact that the committee has now asserted its right, if we chose to do that, to amend the period of advertising and add to it, would be grounds. You ponder that they might wonder why. I ponder that they might understand.

You seem to take the next step and think there would likely be a court challenge. Have you had any experience in the past with cases where an advertising period has been reopened that has led to a court challenge?

**Ms Nemanic:** I don't know of a case in the assembly that we have reopened. Possibly after you've gone

through the application process and the interview process and haven't found a candidate, then obviously there has been re-advertising, but I don't think it's been done at this stage.

**Ms Lankin:** Mr Chair, I have some comments I would like to make but I don't have any further questions for Sylvia. I thank her for her help today.

**The Vice-Chair:** I think there's a question over here, though.

**Mr Tascona:** I just wanted to confirm that steps have been taken in terms of reviewing the applications. That's correct?

**Ms Nemanic:** That's correct.

**Mr Tascona:** I also want to confirm that you have never reopened the process unless there were no qualified candidates.

**Ms Nemanic:** I'd have to check to give you a definitive answer, but to my knowledge, no.

**Mr Tascona:** Did the advertisement indicate that it's within your discretion to reopen the process or redo the process if there wasn't a qualified candidate?

**Ms Nemanic:** It's silent on it. There is no reference to reopening or what would happen if we didn't receive applications or anything like that.

**Mr Tascona:** Are there any other circumstances other than there not being a qualified candidate where you would reopen the process?

**Ms Nemanic:** I would say if the job description really changed from the time that you advertised to the next step, if there were significant changes so that the ads were completely different, then that would—

**Mr Tascona:** Has that occurred in this situation?

**Ms Nemanic:** Not to my knowledge.

**Mr Spina:** To Ms Lankin, I listened to your preamble, Frances, and I was trying to understand the reason behind why you wanted it reopened. Perhaps in your concluding comments you were going to bring that forward, but I wondered if, for all of us, and I know Jean-Marc was a little late coming in, maybe you could clarify that better.

1610

**The Vice-Chair:** Before we go there, are there any other questions for Sylvia?

**Ms Lankin:** Just one quick one. Sorry, I said I didn't have any more.

**The Vice-Chair:** Go ahead.

**Ms Lankin:** When Mr Tascona asked if there are any conditions under which you would reopen, I suspect one of them might be if you were directed to by this committee.

**Ms Nemanic:** Absolutely. Sorry.

**Ms Lankin:** That's OK.

**The Vice-Chair:** Valid point. Are there are other questions for Sylvia?

**Mr Tascona:** Have you ever been directed by a committee to reopen the process?

**Ms Nemanic:** No.

**The Vice-Chair:** Are there any other questions? This would be the time. Thank you, Sylvia.

**Ms Lankin:** Thank you very much.



**The Vice-Chair:** Would you like to respond, please?

**Ms Lankin:** Sure. Let me start with reminding committee members that when a standing committee has been given jurisdiction over the appointment of a position such as this, it is normally from day one in the process straight through. We meet as a group; we determine such things as reviewing the job description; we would make a decision with respect to how we would advertise, where, the number of papers, the number of days of advertising and what the period of time would be before the advertisement was closed. That didn't happen this time.

I'm trying to point out to you that there has been a bit of a flaw in the process from the point of view of members of the Legislative Assembly, not from the point of view of the public, although I think it has a great impact and that's why I bring it to the committee.

Start again. The government House leader came to the other two parties in September and said, "The Legislature won't be coming back for some time." We were not aware, any of us, at that point in time of what that date would be. "We would like to see if we can arrive at an agreement that would facilitate expediting the process of two important positions that are responsible to the Legislative Assembly, the Ombudsman and the Environmental Commissioner. Here's the process that we propose: We establish a three-party committee comprised of one representative from each party."

That is with precedent, by the way, in the past. There have been other occasions, under other governments, where the appointments have been approached that way. It is a challenge of co-operation to the parties to go through a process and arrive at what is truly a multi-partisan or non-partisan appointment of very important positions that have a role of responsibility to the public of Ontario in safeguarding public interest and a role of accountability as well to members of the Legislative Assembly. Each of us knows we have our own relationships from our offices on behalf of our constituents with offices such as the Office of the Ombudsman. It's quite apart and separate from the role of governing, government and opposition; it's a very different relationship.

As part of the proposal to establish this three-person committee and to expedite the process, the government House leader asked that we agree to a shortened time frame. As Sylvia has pointed out, two weeks is the minimum. There are many appointments that go through this process, as you know, and two weeks has been a standard, although it's the minimum, for a number of them, but for really important positions, it has in the past been longer, three or four weeks. I point out to you that it has often been, because it goes through the process of decision-making of a committee, necessarily done while the Legislature is sitting and MPPs have a different opportunity to participate in augmenting the role of paid advertising, whatever the committee decides that may be, in terms of outreach to their constituents, people who have written their offices who are interested in various appointments, people they may know of in their communities.

In order both to accomplish an important precedent in terms of the structure of the committee and to facilitate the government's desire to appoint someone in an expeditious fashion before the appointments ran out, we agreed to that as a package.

Subsequently, the government House leader received direction that in fact the three-person committee was not a go, and that it would be referred to a standing committee. Unfortunately, the instructions to the Legislative Assembly were not revoked at that point in time. It was not referred in its entirety to the standing committee for us as members then to make the determination with respect to the time period. We feel that the time pressures are no longer there because the government has taken the step, along with agreement from the other two parties, to now appoint an interim person to that position to allow the process of selection to unfold.

I feel, as a member of the Legislative Assembly, that in attempting to facilitate something on an all-party agreement, which has now not been implemented in its entirety, I have, if this continues, been deprived of or have forgone the opportunity to participate fully as a member of the Legislative Assembly in an important appointment and position that is responsible to us, not responsible to the government of Ontario or to parties but to members of the Legislative Assembly in its entirety.

Sylvia did say, for example, that if you'd gone through an application process and had screened and come to the determination that there were no qualified applicants—I'm paraphrasing—she assumed on that occasion there would be reason to readvertise. What I'm suggesting to you is that there is reason for this committee to take the decision to readvertise, given the way we have been shortchanged and cut out of this process and the fact that the all-party agreement that had been arrived at has not been fulfilled in its entirety and therefore the role of the standing committee has been quite truncated.

We've not had any input into the upfront process around the job description, the advertisement and the outreach and the methods of outreach for one of the most important positions and a counter balance to government power, the Office of the Ombudsman. We've not had any opportunity to be part of the upfront decision-making; we simply now are going to be part of the determination of the actual successful applicant.

Now that the Legislative Assembly is sitting, there is an opportunity for us to play a role to augment the advertisement. I'm asking the committee to consider the possibility of extending the advertising, reopening the advertising. If we are very concerned that there would actually be legal consequences—it seems like this is a common assumption around this table, but personally from my experience in areas of human resources, I'm not convinced of that—I would be prepared to ask for an actual legal opinion on that through leg counsel to inform the committee and to take serious account of that.

Again, I'm not attempting either to delay or to create a problem in the process—that's the last thing I would want to do—but I do want to speak strongly for the



openness of the process, the perception of openness and the importance of continuing to assert control over the process by members of the Legislative Assembly, as opposed to the government of the day.

**Mr Wettlaufer:** Again I have to go back to my business background. I'm not meaning this critically, Frances, when I say that what you gave was a long and convoluted explanation of what happened here. I'm not being critical, I want you to know. I just feel that you're making something much more complicated than it needs to be.

When I was in business, I can remember—this is about 15 or 20 years ago now—that the president at one time was responsible for branch operations for Canada, and he applied for a branch manager. In the interim, after the deadline for applications was closed, he said, "Wayne, I'm putting you in charge of branch operations for Canada, you make the selection," a very similar situation to this. I don't think it matters who makes the selection or how. We have 82 applications. I'm assuming that 82 is many more than adequate from which to choose. I just can't see that there would be any reason whatever to extend the process.

1620

**Mr Lalonde:** According to what we were told by the human resources person, we have followed the proper procedure at the present time. But my question would be, have we opened up any of those letters that came in from applicants for this position?

**Mr Wettlaufer:** Yes, we have.

**The Vice-Chair:** Have we as a committee? Human resources has.

**Mr Wettlaufer:** Human Resources has screened them.

**Mr Lalonde:** We have opened it all. Thank you.

I would agree to go back if we had followed the proper procedure, as established and agreed upon. But at this time, I would be very scared.

**Mr Spina:** I agree with you, Jean-Marc, and with my friend Wayne, only because the process has to be as open as it should be.

Frances, I fully appreciate the time frame that you're looking at as the flaw in the system, that the committee had not been sitting, but I guess that's where we have the political environment beginning to influence the clean and clear process that it ought to be. Nevertheless, the political environment has an influence, because as politicians, as elected members of the three parties, we are the ones who create the environment under which the Ombudsperson is appointed.

Granted, the committee was not sitting; granted, the committee did not have input to the criteria under which the current list of candidates have submitted, on a timely basis, their applications. However, all three parties did, by your explanation, have the opportunity to have input to that criteria process. Therefore, if we don't have the faith, as members from all three parties, in our House leaders, then what we are really doing if we change that

at this point is overturning the trust that we have in our House leaders collectively.

That's the problem I have with our changing that process at this point. I would be very concerned at overturning the process subject to the process being completed under its current criteria and time frame, so that the applications that have been received are screened, the process comes before the committee and we pick up the ball where it has been left to us.

If, at the end of that process, for whatever reason, the committee decides that they want to change the criteria, that they are not satisfied with the applicants who have been presented to date, then I think legally we are in a position to proceed forward. I'm not a lawyer, but I know enough about human resources management from businesses that I have been involved in that I would be leaving myself liable to the applicants who have applied.

My résumé, my CV, has been examined and now suddenly I may or may not want to apply. But, do you know what I might do if I really wanted to play havoc with this system, what I could do as an individual? I will not submit my CV the second time, having been told that it's going to stand, as Sylvia explained, for the extended time period, but I'm going to sit back. If I didn't receive an interview and, even further, if I didn't receive the job, boy, I'll tell you, if I really wanted to, I could play havoc with this whole process and bring it into the legal system.

That's my concern, that the minute the process enters the judicial system, then it tarnishes entirely the role of the Ombudsman. I leave that situation.

While I appreciate your concern, I really have a great deal of concern that we would be in a worse position afterwards. A candidate as admirable as another, maybe even better, might come forward. But that's a very large risk, and unfortunately, in society there are many good candidates we lose in the process because of the way we have to define it and adhere to it.

**Ms Lankin:** I can read the way the tide is going here and will accept that. I don't want to prolong the debate, I just want to respond to a couple of points and make sure that it's clearly on record.

Raising the spectre of legal action, unless we're prepared to take the step to get legal council to provide us with that information and their best advice, I think, is unfair. We don't know that ourselves. As you said, you're not a lawyer. I'm not lawyer. We don't know that it is in fact a possibility or a probability.

Second, the point that you make with respect to the agreement of House leaders is exactly the point that I'm making. The agreement of House leaders was not fulfilled, the agreement that the parties entered into in good faith to expedite the process, in acceding to the government's request to have someone in place without going to the point of having an interim Ombudsman to have someone in place before the term of the Ombudsman expired. That package of agreements has not been implemented.

What has happened is that the role of the very body to which the Ombudsman reports, the Legislative Assem-

bly, and the Legislative Assembly committee, to which the process has now been referred, as opposed to the original agreement, has been usurped.

Mr Wettlaufer raised an example from his own past work history and said, "It's exactly the same." I point out to him, it's not.

The Ombudsman, a creation of legislation, reports to the Legislative Assembly. There is a different role for us as MPPs than simply as representatives of our parties with respect to this issue. The normal process, which would have a committee sitting, means the Legislature is sitting, means MPPs are here, active in Legislative Assembly work as opposed to in their constituencies on constituency work and can be active members and participants in the process for the advertising and the selection of one of the most important positions in counterbalance to government powers in our institution.

I just feel very strongly that the role of MPPs has been usurped here. I hear very clearly from Sylvia her concern about jeopardizing the integrity of the process. I think that has been done and has not been done by the members of the Legislative Assembly or this committee, for that I feel a great deal of regret. I'm sorry if the committee finds itself not able to agree with that and take action

to rectify that on behalf of members of the Legislative Assembly. I'll leave it at that.

**Mr Smitherman:** Are there additional speakers, Mr Chairman?

**The Vice-Chair:** You're the last one so far.

**Mr Smitherman:** I'll pass.

**The Vice-Chair:** What are the wishes of the committee then?

**Ms Lankin:** I guess at this point in time I should put in an official motion and the matter can be decided.

**The Vice-Chair:** That would be appropriate.

**Ms Lankin:** I would like to request that the subcommittee meet to review legal advice and to make a recommendation to be brought back to this committee with respect to reopening the period of advertising for the position of the Ombudsman.

**The Vice-Chair:** Any debate on that?

I'll call the question then. All those in favour of Ms Lankin's motion? All those opposed? The motion is lost.

So, then, the subcommittee itself will be meeting in the near future. At this time, I guess, we ask that the committee itself stand adjourned until the call of the Chair. Thank you.

*The committee adjourned at 1629.*





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### STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

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Mr R. Gary Stewart (Peterborough PC)

#### **Vice-Chair / Vice-Président**

Mr Brad Clark (Stoney Creek PC)

Ms Marilyn Churley (Broadview-Greenwood ND)

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Mr Pat Hoy (Chatham-Kent Essex L)

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Mr George Smitherman (Toronto Centre-Rosedale / Toronto-Centre-Rosedale L)

Mr Joseph Spina (Brampton Centre / -Centre PC)

#### **Also taking part / Autres participants et participantes**

Ms Sylvia Nemanic, executive director, Administrative Services Division,  
Legislative Assembly of Ontario

#### **Clerk / Greffière**

Ms Donna Bryce





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First Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 18 November 1999

# Journal des débats (Hansard)

Jeudi 18 novembre 1999

## Standing committee on the Legislative Assembly

Subcommittee report

## Comité permanent de l'Assemblée législative

Rapport du sous-comité

Chair: R. Gary Stewart  
Clerk: Donna Bryce

Président : R. Gary Stewart  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Thursday 18 November 1999

Jeudi 18 novembre 1999

*The committee met at 1548 in committee room 1.*

## SUBCOMMITTEE REPORT

**The Chair (Mr R. Gary Stewart):** Ladies and gentlemen, I think we will get started, if we may. One of the Liberal caucus members has suggested he would be late and the other one was just appointed today, so I think we'll commence.

Just one comment: I wasn't here on the day of my election as Chair. It was a tough campaign. I thank you all for your support, and I will try to rule on a very neutral basis.

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** Mr Chair, the subcommittee met today, November 18, and there are some recommendations to the committee that I'd move.

**The Chair:** I think they have to be read into the record. Would you like to read them and then move them?

**Mr Tascona:** That's what I'm going to do.

"Your subcommittee met on November 18, 1999, and has agreed to recommend:

"(1) That the following information be provided by the director of Human Resources to the full committee at its meeting on November 18:

"An overview on the Office of the Ombudsman;

"A recommended interview structure for the appointment of a new Ombudsman;

"Selection criteria details;

"Prioritized list of candidates based on criteria details, with criteria sheets attached;

"List of the top 25 candidates;

"Eight to 10 suggested interview questions;

"(2) That the committee deal with the appointment of the Ombudsman in closed session to maintain confidentiality throughout the selection process.

"(3) That the matter of the private bill application by the certified general accountants which was referred to this committee by the standing committee on regulations and private bills be placed on a future meeting agenda once the timetable for the hiring of the Ombudsman is known.

"(4) That the assignment of ministries and offices to the general government and justice and social policy standing committees under standing order 109(b) be placed on a future meeting agenda once the timetable for the hiring of the Ombudsman is known."

I move that.

**The Chair:** Debate? Seeing none, all in favour? Those opposed? The motion is carried.

I want to recess for a couple of minutes, and then we will go into closed session.

*The committee continued in closed session at 1551.*



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#### **Also taking part / Autres participants et participantes**

Ms Marilyn Abraham, director, Human Resources

#### **Clerk / Greffière**

Ms Donna Bryce



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L'ASSEMBLÉE LÉGISLATIVE

Thursday 27 April 2000

Jeudi 27 avril 2000

*The committee met at 1537 in committee room 1.*

## SUBCOMMITTEE REPORT

**The Chair (Mr R. Gary Stewart):** I call the meeting to order. You have before you the report of the subcommittee. Can I have a motion to approve that, please.

**Ms Marilyn Mushinski (Scarborough Centre):** I so move.

**The Chair:** We will read the report for Hansard.

"Report of the subcommittee, Tuesday, April 4—"

**Mr Jerry J. Ouellette (Oshawa):** Dispense.

**The Chair:** You want to find out if I can read or not.

"Report of the subcommittee, Tuesday, April 4, 2000:

"Your subcommittee met on Tuesday, April 4, 2000, to consider its schedule of business, and recommends the following:

"(1) That the committee meet, pursuant to standing order 109(b), on Thursday, April 27, 2000, for the purpose of assigning ministries and offices to standing committees.

"(2) That the committee adopt the attached draft as its report to the House of ministries and offices assigned to standing committees, pursuant to standing order 109(b) [See attached draft].

"(3) That the committee schedule a closed session briefing on Thursday, April 27, 2000, by the clerk of the committee and the research officer respecting the committee's new mandate (standing order 106(f)) regarding the Ombudsman.

"(4) That the committee schedule an introductory meeting with the Ombudsman in open session on Thursday, April 27, 2000.

"(5) That the committee meet, pursuant to standing order 81, on Thursday, May 11, 2000, for the purpose of considering the referral by the Clerk of the House of the following application for private legislation: Draft Bill Pr4, An Act respecting the Certified General Accountants Association of Ontario.

"(6) That the committee invite the following to make presentations during the committee's consideration of the referral application for private legislation: legislative counsel; the Certified General Accountants Association of Ontario; and other interested parties that have contacted the clerk of the standing committee on regulations and private bills.

"(7) That the committee schedule its biannual review with the Clerk of the House regarding the administration of the House and the provision of services to members on Thursday, May 18, 2000.

"(8) That the committee schedule its biannual review with the Sergeant at Arms regarding security on Thursday, April 18, 2000.

"(9) That the committee schedule its annual review of the television broadcast system, the televising of the legislative proceedings, and the television guidelines established by the House on Thursday, May 18, 2000."

Any comments regarding the subcommittee report?

**Mr Wayne Wettlaufer (Kitchener Centre):** Mr Chair, we know you can't read because item 8 says "Thursday, May 18," not "Thursday, April 18."

**The Chair:** OK, we've established that.

**Ms Marilyn Churley (Broadview-Greenwood):** We don't need an opposition. We've got your own member to do it for us.

**The Chair:** These are supposed to be my friends.

**Ms Churley:** With friends like that—

**The Chair:** That's the neutrality of my position here. There was no comment back to him.

Any other comments? If not, all in favour? The motion is carried.

As has been suggested, we will have a closed session briefing of the committee regarding the mandate, and Andrew McNaught is going to do that briefing in a couple of minutes.

*The committee continued in closed session from 1541 to 1558.*

## OMBUDSMAN

**The Chair:** We'll call the meeting back to order. I'd like to welcome our new Ombudsman, Clare Lewis. Welcome, Clare. This is the first time I've had the opportunity to congratulate you on your new position. On behalf of the committee, I welcome you to our committee. I think we all look forward to working with you. Whether there are issues or not, I think it would be very beneficial to all of us if we try and meet on a fairly regular basis.

I don't know whether you know everybody around the table, but if we could start with members giving their name and the riding they represent, it might be advantageous to Mr Lewis, and we'll go on from there.

**Mr Clare Lewis:** I appreciate it.

**Ms Mushinski:** My name is Marilyn Mushinski and I'm the member for Scarborough Centre.

**Mr Lewis:** I used to live in the area.

**Ms Mushinski:** Yes, I was before you. When I was a councillor in Scarborough, I came to the Liquor Licence Board for a few things.

**Mr Ouellette:** Jerry Ouellette, the member for Oshawa. It's nice to see you again.

**Mr Lewis:** I knew your father well.

**Mr Ouellette:** I know, but don't hold it against me.

**Mr Lewis:** Or he against me. I was the police complaints commissioner when he was chief, right?

**Mr Ouellette:** I know.

**Mr Lewis:** I'm sorry.

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** Joe Tascona. I'm the member from Barrie-Simcoe-Bradford.

**Mr Lewis:** Yes, Mr Tascona. It's good to see you again. How are you, sir?

**Ms Churley:** I'm Marilyn Churley and I'm the member for Broadview-Greenwood. We know each other well. I was Mr Lewis's boss at one time as the Minister of Consumer and Commercial Relations.

**Mr Lewis:** You sure were; when I was appointed as chair of the gaming commission, yes.

**Ms Churley:** That's right.

**Mr Jean-Marc Lalonde (Glengarry-Prescott-Russell):** Jean-Marc Lalonde, the member for Glengarry-Prescott-Russell.

**Mr Lewis:** Mr Lalonde, how are you, sir?

**Mr Lalonde:** It's nice to see you again.

**Mr Lewis:** It's a pleasure to see you again. Thank you.

**Ms Caroline Di Cocco (Sarnia-Lambton):** I'm Caroline Di Cocco and I'm the member of provincial Parliament from Sarnia-Lambton.

**Mr Lewis:** It's a pleasure to meet you, Ms Di Cocco.

**Ms Di Cocco:** It's a pleasure to meet you.

**Mr Lewis:** How's Point Edward doing?

**Ms Di Cocco:** Oh, it's just dandy with the new casino.

**Mr Lewis:** They just opened it, didn't they?

**Ms Di Cocco:** Yes, they opened it last week.

**Mr Lewis:** Is it going to compete with the track, Hiawatha?

**Ms Di Cocco:** The revenues seem to—of course we tap in from the United States.

**Mr Lewis:** Yes, you've got that new bridge.

**Ms Di Cocco:** Hey, the revenues are there.

**Mr Lewis:** Sorry. Pardon me.

**The Chair:** That's great. Needless to say, you know who I am. I'm the member for Peterborough.

**Mr Lewis:** Yes, sir. You had me down to your riding where I got beaten up as a faceless bureaucrat—do you remember?—on gambling.

**The Chair:** Yes, that was the first time I met you. If you can handle this group in my riding—famous Peterborough, demonstrations, all of it. That stuff was great. But anyway, Clare, I do welcome you and look

forward to meeting with you on a regular basis. I assume that you're probably going to introduce Ms Crean.

**Mr Lewis:** I'd like to introduce Fiona Crean, who is the executive director of the Ombudsman's office and has been for five years. She also filled the role of acting Ombudsman, on your recommendation, for the three-month period between Roberta Jamieson and myself, and I'm most grateful for that.

**Ms Churley:** And a good job she did too.

**The Chair:** Wayne, do you want to just mention your name and your riding so that Mr Lewis and Ms Crean know.

**Mr Wettlaufer:** I'm Wayne Wettlaufer, Kitchener Centre.

**Mr Lewis:** Yes, we chatted on the way in. It's nice to see you again.

**Mr Wettlaufer:** I thought we had a five-minute recess. That's the only reason I left, Clare. Sorry about that.

**The Chair:** We will now let you chat with us and maybe make some comments on your new role and how you see us working with it. We certainly know the role that we have to play in the relationship, so I'll turn it over to you, Clare, and let you go from here.

**Mr Lewis:** Thank you very much, Mr Stewart. I must say it's a great pleasure to come back before this committee today. I was here in a much more, as I said to you, sir, fearful manner back in November, or thereabouts, when I was interviewed, I thought quite thoroughly. I must make a correction, though.

Mr Lalonde, you asked me a question during that interview and I blew it terribly and it has haunted me ever since. The question, which I couldn't hear properly—and you'll find when you speak to me I'm deaf in one ear and I have difficulty in this room. I think the question was, what did I think would be the—

**The Chair:** Mr Lewis, the interview was in camera. Do you want it on the record?

**Mr Lewis:** Oh, yes. This is an easy one.

**The Chair:** OK. I just wanted to make sure.

**Mr Lewis:** That's why I'm so embarrassed that I missed it, and I can segue in. The question was, I believe, what did I think would be the most difficult part of the learning curve if I were to be appointed. I misunderstood the question entirely. In any event, I'm now in a position to tell you that the steepest part of the learning curve is the complexity of the issues with which I have to deal, the breadth of them from across government. Some of them are really quite complex. I find it fascinating and challenging, but it's still something that I'm very much engaged in, and I'm grateful to staff for that assistance. But I did want you to know that I hadn't forgotten the question.

I'm really very pleased to be able to be here. I'm prepared to say, if I may, Mr Stewart, coming out of the interviews, when you interviewed me, I was asked what priorities I might have if I were to receive the office. I gave you as two of the priorities that I would first call the secretary to cabinet, Ms Burak, to see if I could arrange a meeting with the council of deputies in order to go before



them and to start building relationships with the public service at that level as a beginning. I've done that, and I think it was productive and will continue to be productive.

I told you the second thing I would do was that I would seek, through you, to come back before you, not just once but on an ongoing basis at mutual convenience, to keep each other abreast on what's happening in my office and your expectations and concerns, if any. We've now begun that, and I thank you for it.

I'm very pleased of course to be the province's fifth Ombudsman, and I'm grateful to this committee for having nominated me for that purpose. I've been in office now for three months, and it has been a fascinating time and quite a busy time but one that I think has been quite fruitful. The work is something that I find, as I think I suggested to you in the interview, is a natural product of the background that I've had, which included complaint resolution and so on. I've become quite interested in the workings of the office as it exists.

I'm pleased to tell you that my assessment of the office, in the three months I have been there, is that there are some extremely good systems in play and some very competent staff who are dedicated to the work they do on behalf of the people of this province. I'm also pleased to say to you—and it was an important matter for me—that I have no reason to believe they are anything but willing to follow the reasoned leadership of a new Ombudsman and take the cue in the approach to the office from the different perspective a new Ombudsman may have. I have been getting what I find to be considerable co-operation in work as I perform it and in making some changes within the office as to emphases on how we proceed.

To me, it's extremely important early in the time in the office to build relationships. One of the critical relationships is with the elected members, who in fact are entitled under the act to bring forward complaints on behalf of affected parties, and you do. But, as this committee, you are also the face of the Legislature, to which I must report on an annual basis, but rationally, I think, on a more ongoing basis than that. As I said, I also wish to build relationships with the public service, so that I have some hope of success in the resolution of complaints, when they are deserving of resolution. I'm very alive to the fact that the only power an Ombudsman has is that of recommendation. I do not have the power to compel anybody to do anything. Therefore, in order to succeed, in appropriate cases, in having recommendations get a good ear, there have to be reasonably solid relationships in existence, bridges that can be relied upon to come to good results. We've started that process, and I think there has been a good deal of that among staff for some years.

One of the things an Ombudsman has the authority to do, if unable to resolve a complaint at a public service level is, after notifying the minister and the Premier, to lay before the committee final reports which are intended to then be placed before you for the purpose of a debate between the ministry and the Ombudsman as to the

merits of the recommendations being made by the Ombudsman. It is then for you, on a vote I guess, to decide whether or not you wish to support the Ombudsman in going before the House to help persuade change in whatever way the Ombudsman asks. I don't expect, and I don't hope, to come here on that basis on a tremendously frequent basis, because a huge number of complaints are resolved to the satisfaction of both the ministries and the complainants long before getting here, and a lot of them are dismissed—I want to make that very clear. We dismiss a good number of complaints, I hope for proper reasons. But during the next five years I do expect to have occasion to come before you, and I look forward to those opportunities when I will have to present my case, presumably in opposition to the ministry or a commission.

At the moment, however, there are four which are before you or have been before you, I think, since April 29 of last year. Roberta Jamieson, Ombudsman for the past 10 years, had brought four before you last year. When I came into office, one of the first things I had to decide was how to deal with those four matters. I talked to your Chair, Mr Stewart, earlier this month and told him that I had either resolved or would be withdrawing each of those. I'm prepared to discuss them with you briefly now and take any questions you have.

Two of the complaints involved the Ontario Human Rights Commission, one involved the Family Responsibility Office and the fourth involved the adoption disclosure registry. I'll start with the first human rights complaint, if I may. By the way, I wrote a letter to Mr Stewart indicating my intent on these matters prior to today. Is that letter before you?

**Ms Mushinski:** I don't have a copy of the letter.

**The Chair:** They probably weren't distributed.

**Mr Lewis:** I believe all members were copied.

**Ms Churley:** Yes, I have a copy.

**The Chair:** They were sent out April 17.

1610

**Mr Lewis:** I think I can be fairly descriptive and brief about them.

One involved a woman named Mrs P, who had a complaint of improper decision-making on the part of the Human Rights Commission at an administrative level with respect to the resolution of her complaint of discrimination by reason of disability. She had a severe fall and she did not believe she was properly accommodated by her employer with respect to the disability. She complained to the commission, and the commission, at the first instance, took the position that there were other means available to her under other legislation than the human rights and she ought to exercise that. In our view, that was in error. There was no other recourse for her on this issue. She then sought reconsideration of that decision. The matter was reconsidered and the same decision was made and, in our view, the same error made. The matter was stalemated.

The commission, in fact, conceded the error. They recognized the error. Mr Norton, the chief commissioner,



said, "You're right." My predecessor believed that more than that was in order. Their position was that even if they had been correct and said, "Yes, it's our jurisdiction," they would never have sent it on to a hearing before a board of inquiry because they didn't think it would have succeeded. Ms Jamieson felt that was a bootstrap argument, I guess, justifying an error on the basis that you wouldn't have done anything anyway.

To put the matter to bed, I felt that this was worth a discussion between myself and Mr Norton, and we had it and it was fruitful. He agreed on an *ex gratia* basis, not to be considered as a precedent—I guess we'll quarrel about that later—that a payment in the amount of \$2,250 would be made to Mrs P and an apology made. Indeed that was done, and she was very pleased with the result. So I am, with respect and with your permission, withdrawing that matter from consideration before you, although I'm prepared to discuss it if you wish.

**The Chair:** Are there any questions on that one?

**Ms Mushinski:** I have one question. I'm interested in your comment about precedent.

**Mr Lewis:** Perhaps I shouldn't have said it, but he was concerned that an error not necessarily be a case of a financial response. I couldn't do other than say, I think properly, that I would not treat this particular case, given the history of it and their strong feelings on it, as an example should another case of somewhat the same nature come forward. I would have to make an independent case for any other cases.

**Ms Mushinski:** So I take it that the compensation reflected that.

**Mr Lewis:** To a degree. I'm not sure I understand, Ms Mushinski, but it's less than what my predecessor had recommended but more than I thought was appropriate, personally. The amount she got was in the range that I thought was appropriate in that had she succeeded before the board, I believed it would be very close to that amount. Given the history of awards by the commission in like cases, I thought it would be very similar. The original amount was one that I wasn't prepared to argue for. So it's a good result from the point of view of the complainant. The commission, I believe, is pleased not to come forward, and we will continue to deal with the commission on an ongoing basis.

The second matter with the Human Rights Commission was the issue of delay and not reaching their goal of arriving at a current caseload that is an up-to-date caseload and getting rid of the backlog. The problem here for me as Ombudsman is that the material before you is now over a year old, based on a report well in excess of a year old, and the statistics are simply not relevant to today's status of the agency. I would not be able, in my view, to persuade you that last year's concern was today's matter of fact. I have satisfied myself that some real improvements have been made in the office.

I don't want to say for a moment that I'm suggesting the Human Rights Commission backlog is non-existent or that it is not going to be a matter of concern for the future; it will be, I have no doubt. But I wish to say that

it's clear they have taken some real steps with respect to their case management system and with respect to their resolution of complaints. I can tell you today that I believe they have fewer cases in their backlog—something like 1,800 at this moment—than they resolved last year, some 2,450. That is the first real sign, from the commission's point of view, that they are starting to come towards a current caseload. I believe they haven't seen a backlog that low in these many years.

I'm not able to come forward with the original report. Again, I don't wish to suggest that we don't have ongoing concerns. We do receive ongoing complaints and we're going to look at them and we're going to be concerned about it. We're going to monitor this issue. It's just a natural between our offices. It's not going to go away, but there are efforts being made. I know Mr Norton is eager to continue that process.

**Ms Di Cocco:** Why is the caseload so high, the backlog? What are your findings?

**Mr Lewis:** I will tell you a little bit about complaint resolution from a personal point of view, because I was the police complaints commissioner for eight and a half years. There are not very many complaints organizations, be they human rights commissions, Ombudsman—although I'm going to say that's not true of us—or police complaints commissions and so on, that don't run into serious backlog problems.

One of the reasons is bad management; from early days, really plain bad management. These organizations often in the early days were staffed by people with real commitment to the issues involved, and properly so, they should be, but skills in one thing aren't necessarily skills in another. I've lived that experience through the police complaints process. Time gets taken that is often unwarranted. Disputes arise within the organization that become really quite difficult themselves, and I think it's public knowledge that was true of the Ontario Human Rights Commission for some time. They are a little bit like the—I'll probably get this one wrong—Elysian stables: They take a lot of sweeping. Sweeping has begun to a large degree through technology and more professional managers, who have recognition that they just have to deal with it or the substratum of the agency is going to fail, they are just not going to be able to perform their duty, the job they really want to do.

1620

I'm going to make a statement right now about the Ombudsman's office and one of the best pleasures I had when I walked into the place. Roberta Jamieson and Fiona Crean instituted a case management system in the Office of the Ombudsman which is bar none among Ombudsman offices and in fact, for the benefit of the general revenue, is on sale and has been sold to other institutions. It's absolutely essential. If you can't get control of the cases and their orderly passage through, you're doomed and it grows. When I was police complaints commissioner, I'll confess, I don't think we ever had that thoroughly under control, although towards the end—and we certainly didn't have effective manage-



ment. We were busy battling other issues. But I think there are things turning around in the area. Does that help?

**Ms Di Cocco:** That helps. You say management improvement is always an end that we all want. But on the other hand is staffing a different factor? I'm just trying to understand, because it does affect—we're talking 1,800 people, and when you talk about these agencies, as you said, conflict resolution or issues resolution, it's important that they be expedited as quickly as possible.

**Mr Lewis:** Absolutely.

**Ms Di Cocco:** That's really important. So there are areas of management that have to be addressed, and also the actual facilitating of it, the bodies to facilitate it, the people. What's your take on that?

**Mr Lewis:** As agencies are downsized there are problems that go with that, there's no question. The organizations have to reinvent themselves in order to meet the current demand, and that has happened in the Office of the Ombudsman. There's been enormous change in that office from when I knew it originally. It's now a much flatter organization and so on. I'll posit that it's getting to a point beyond which it would be hard to be as good as I think we can be. There will always be exceptions within your caseload but it's important to try to get to what they call a current caseload operation, so that if the Human Rights Commission can get rid of as many complaints or more complaints in a year than they can receive, then they will have eliminated the backlog in time and they will be able to stay current. Because there are a lot of people who are aggrieved and they become doubly aggrieved by the delay, there's no question about it. I think that delay is very harmful to the people involved. I will have something to say about that in particular on the last matter I raise.

**The Chair:** Any other questions on number 2?

**Ms Mushinski:** It's perhaps not so much number 2 as it is all four of them. I'm looking at your letter to Mr Stewart and I was just wondering if you could explain to me what you mean by "own motion." Is that when you develop a case based upon the information that's received?

**Mr Lewis:** An "own motion" investigation is not based on an individual complaint from a member of the public; it's a matter of the Ombudsman, who is empowered under the act to do this, raising his or her own complaint, or creating a complaint, if you will, and beginning an investigation. Although I'm not at liberty today to disclose this to you but will be shortly, I've done one myself since I've been in office. I began an "own motion" investigation and closed it, within about five weeks. But it was an issue that I thought was alive. We didn't have a complaint on it but I believed it needed to be addressed, and it was.

So "own motion" means the Ombudsman started it, as opposed to an individual complainant. However, I have to tell you that most "own motion" investigations get started because there has been a series of complaints

from members of the public, and finally there is a decision to put them together in a particular way that may not be well expressed in the individual complaints.

**Ms Churley:** I'm looking forward to getting on to the next two as well. I'll make a comment about those in connection with the ones we are discussing, though. The Human Rights Commission has some control over the cases it takes on. I'm not sure if the criteria have been changed in any way. I guess what I'm getting at is that there has been downsizing there; we all know that. There are fewer staff. But you are saying there has been a change in management, and I believe, for the record, that Mr Norton is doing a very good job. But I have some concerns—and I have no proof of this, it's just concerns—that the backlog is dropping while the organization has been downsized, and there is some control over which cases are taken on. In the next two, the Family Responsibility Office and the birth searches, the ministries have no control over those cases, whereas the human rights and in fact your organization do. I have some concerns that that may be part of what's happening in the Human Rights Commission to get this caseload down.

**Mr Lewis:** I think that's a very cogent concern, and I'm not saying it doesn't happen. There are those who say there is a reason for it to happen in some cases. I can tell you, and I'm not afraid to say this to you, that a section of my act says that effectively I don't have to investigate a complaint if it's more than a year old after the time it came to the person's attention. I had a similar section in my police complaints act. But the attitude of the office, and I know the former attitude of the Human Rights Commission, was to never exercise that and to take every complaint that came. The Legislature gave it a power, albeit a discretionary power that should be used with care, and I think discretionary powers should be exercised. There's a reason the Legislature placed it in there, and there's a reason not to get yourself buried by complaints that are never going to be able to be resolved.

**Ms Churley:** But you have to know where that balance is.

**Mr Lewis:** You have to know where the balance is, and that takes good leadership. I think your point is excellent, and one we'll be looking at as we go along, to ensure that they're not dumping at the front end. But I can tell you that I have every intent, in the operation of my office, to do early assessments of cases and make early decisions. If they are not deemed to me to be of merit, I'll get them out, because I have cases that are going to be good and I want to be able to deal with them. But it's a good point, and I'll undertake to keep on top of that, OK?

**Ms Churley:** OK. Thank you.

**The Chair:** I think we can go on to the third.

**Mr Lewis:** The third is the FRO, the Family Responsibility Office.

*Interjection.*

**Mr Lewis:** What can I tell you? My statistics are out of date, big-time.



I have met with the deputy, Andromache Karakatsanis, in some detail. As you know, she appeared before the public accounts committee last month, I suppose in response to the Provincial Auditor's report, and she certainly went through a thorough grilling there. However, there have been improvements. There are increases in the work being done. There are some policy issues that I know are being debated, about whether you allow opt-outs and that sort of thing, but I don't propose to deal with those. However, I am of the position at this stage that our report, which I think was absolutely appropriate at the time it was filed, is not one I can properly bring before you today. I think the Family Responsibility Office requires monitoring—and I'll get the opportunity, because I continue to get the complaints—to see whether they are indeed taking advantage of some more monies and some better systems they are getting in. We have reason to believe there are some improvements of significance, but it's a huge responsibility with terrific impacts.

1630

You talk about the grief, Ms Di Cocco. The Toronto Star must be pretty proud of itself today. Did you see what happened? You know the man who they revealed about a month ago was living with his parents in Toronto and in Florida and had \$103,000 owing to his 12-year-child? Yesterday a judge jailed him for nine months. In truth, that was a result of the Toronto Star. Well, the Toronto Star found him; that's what they did. They found the guy, which the collection agency had failed to do, but FRO acted. They brought their action and got a jail term. So I bet you'll find that all of a sudden there's some parental money going in there.

**Ms Churley:** A lot more dads paying up.

**Mr Lewis:** Do you think he'll do nine months, Ms Churley?

**Ms Mushinski:** I guess I have to be careful, because I'm on the public accounts committee, which is currently discussing this very issue and it's still in camera, so I don't want to divulge those discussions. But I am interested in what led to your "own motion" investigation with respect to the FRO's processing of its caseloads. It sounds to me as if that's not an individual case—

**Mr Lewis:** It's not.

**Ms Mushinski:** Was it an individual case that led you to the investigation of the overall operations of the FRO?

**Mr Lewis:** Ms Jamieson, who was the Ombudsman, had been involved with FRO for five years.

**Ms Mushinski:** Going back to pre-1995?

**Mr Lewis:** Yes, from the time of the transfer of the program from family support to FRO. I guess you will remember the troubles that occurred at that time, when they moved out to Downsview and so on. That was one of Ms Jamieson's central investigatory commitments. She felt it was sufficiently important and in sufficient disarray that she was on it all the time, and it was very much a continuing thing. She made ongoing reports and finally took the position, as I understand it, that this was a real Ombudsman's "own motion" investigation; you

couldn't deal with it on a complaint basis. We had so many complaints; something like 15% of our caseload was FRO. So you weren't going to resolve them that way; you had to do a system-wide investigation. That, by the way, is something the Ombudsman's office does. We do it in corrections, where we have a very high caseload; some 30% of the office's caseload is out of corrections. We can't do it on an individual basis; we do it system-wide. In a month, when I give the annual report, I think I'll be able to show you some very good productive results with that. That's what precipitated the "own motion."

**Ms Mushinski:** Do you have a direct relationship with, let's say, the Provincial Auditor—

**Mr Lewis:** Yes.

**Ms Mushinski:** —to perhaps send in a value-for-money audit, for example?

**Mr Lewis:** No, we can't do that.

**Ms Mushinski:** But could you make that recommendation?

**Mr Lewis:** Yes, I guess we could.

**Ms Churley:** I wonder how it is going now in terms of complaints. Have they gone down?

**Mr Lewis:** I should know the answer to that. Marginally, yes.

**Ms Churley:** I know our office is still getting a lot, and I guess my—it's more like a comment, but I would ask you as well, are you continuing to monitor that very closely?

**Mr Lewis:** Oh, yes.

**Ms Churley:** One of the issues we are getting complaints about now is the fees.

**Mr Lewis:** You mean on the postdated cheques?

**Ms Churley:** Yes, the fees that have been imposed if people—it's my understanding that if they download electronically they don't have to pay the fee, but otherwise they do.

**Mr Lewis:** Not if they send their cheques in one at a time. It's if they send in postdated cheques that they get charged, I believe.

**Ms Churley:** No.

**Ms Mushinski:** That's changed.

**Mr Lewis:** Is that changed?

**Ms Churley:** But it costs money to get information.

**Mr Lewis:** Yes, sure.

**Ms Churley:** Some of the complaints I am getting in particular, and I don't know if you have, are that people are saying—and I'm sorry, I didn't bring the details with me—that it's mistakes the family support office actually made themselves. They need some information because the information they previously had was wrong, and they are having to pay the fee to get information. I don't know if you are hearing about those complaints, but I think it is something we need to keep an eye on. I certainly have had some of those cases brought forward.

**Mr Lewis:** Just last week the Toronto Star reported one, a considerable mistake.

*Interjection.*



**Ms Churley:** I'm sure it is. But this is an opportunity to tell the Ombudsman about issues I am hearing about and ask if they are keeping an eye on it. It's an opportunity to have another body take a look at it.

**Mr Lewis:** Could I give one more answer?

**Ms Churley:** Yes.

**Mr Lewis:** We wrote to the deputy on April 1 expressing our concern about the user fees, and we are going to monitor.

**Ms Churley:** OK. Thank you.

**Mr Ouellette:** Coming from Oshawa, I should put this in these terms: I would just like to get on the record that the Family Responsibility Office is an extremely well-oiled machine, and I certainly hope and expect from your comments today that you will be able to thin that 500-weight oil we are dealing with.

**Mr Lewis:** The?

**Mr Ouellette:** The 500-weight oil we are dealing with.

**Ms Churley:** Five hundred what?

**Ms Mushinski:** Five-hundred-weight oil.

**Ms Churley:** Oh. OK. Got it. Thank you.

**Ms Mushinski:** He's Canadian; I'm English.

**The Chair:** That's right. An analogy. Any other questions?

**Ms Di Cocco:** I just want to say I am really pleased to see that if there is a tendency to see a systemic problem of some nature—like Ms Churley has stated, our office has been deluged with errors and all kinds of things that haven't been processed properly.

**Mr Lewis:** I'm sure.

**Ms Di Cocco:** So I thank you for continuing on that journey.

**Mr Lewis:** Well, I suppose it's really the only way to go, and it's the only way we can function, because we are going to go into a quandary, and we can't cope if we don't do it that way.

**Ms Di Cocco:** Does the ministry do strategic audits of these offices, for instance, the Family Responsibility Office, as businesses do? Strategic audits meaning that—

**Mr Lewis:** Internal?

**Ms Di Cocco:** Strategic in the sense of whether it is doing what it is supposed to be doing. It isn't just money but—

**Mr Lewis:** It's the value of it.

**Ms Di Cocco:** It's more than value. It's actually how it is working, how it's functioning. I have known them in the term of "strategic audit."

**Mr Lewis:** I can't speak for the Ministry of the Attorney General. I don't know that.

**Ms Di Cocco:** You haven't—

**Mr Lewis:** No. But it has certainly been done to me before.

**Ms Di Cocco:** Do you look at that when you are doing a value or investigating?

**Mr Lewis:** Yes, absolutely.

**Ms Di Cocco:** OK.

**The Chair:** If you would like to move on to number four, please.

**Mr Lewis:** I think this is a success story. The adoption disclosure register was in a unique position. Here is a case of a service of government which really, I guess, causes a lot of people anguish. People who come to this program have real concerns about their birth parents and so on.

A year ago, they had a backlog of 16,000, and the backlog was fascinating. Once an investigation is commenced, it takes up to eight months—if they find a parent, they go through a fairly sophisticated counselling process before they try to put people together—to actually finish the file. The problem was that it was taking 7.3 years to start the investigation. The backlog was horrible, and this was a hard-working and, I understand, quite dedicated staff of people. But they had this huge number of cases and a very complex process. Coping with these issues is touchy. If you find the mother and you try to put them together, it takes time and whatever. They couldn't get to them. This was the one case, I suppose, where I thought I was really going to have to come before you and make the argument for.

1640

I met with the deputy, Mr Costante, and it was a fascinating meeting. He was certainly ready for me. The ministry has committed \$2.4 million and 24.5 full-time equivalent new employees to the elimination of this backlog within 18 months. I think that's great; I just do. There it is, the Ministry of Community and Social Services. It's a real achievement, and I'm very pleased at it and I think a lot of people will be. It's a case of a government program that, if government thinks it should be offered, just cannot continue to be offered in the way it has been going on, and it looks as though it will be addressed. We will watch it, but I have no reason to believe it should be other than successful.

Those are the matters I had to bring before you formally. If you have any questions about any of them, I'm happy.

**Ms Churley:** I'm very happy to hear what you said about the fourth one. As you know, I have a personal interest in this, and I'm glad you are watching it closely. I'm not convinced, when there's that big a backlog, that 24.5 staff can eliminate it in that amount of time. But I'm still happy that that advancement has been made.

I'm just wondering if you receive any complaints from birth parents or adoptees not about the waiting list but about the process they have to go through—

**Mr Lewis:** I don't know that.

**Ms Churley:** Maybe you could hear the whole thing before you ask Fiona—the mandatory counselling, which lots of people don't want and it's forced on them. The second thing is that many people, as I know very well, don't like to have to go through this process, especially the adult adoptees. I'm wondering if you get complaints from people that they even have to go on this waiting list to wait to see if the other party is actually registered before action can even be taken.



**Mr Lewis:** They certainly accelerated the match. Do you mean to see whether the other person is registered so they can get an automatic match?

**Ms Churley:** That's what the system now is. I'm not going to go into a great deal of detail on this. I'll close it here. The system now is that you have to have a match. If not, the adult adoptee cannot get any further information.

**Mr Lewis:** That's right.

**Ms Churley:** Of course, I'm trying to get a bill through the House to change that. I'm just wondering if there are actual complaints about the process.

**Mr Lewis:** The answer is no, and I'm grateful for that. I hadn't heard of any. The issue has been the length of the process.

**Mr Tascona:** I have two questions. What is your understanding of the birth relative searches and what was the problem, in your view, about what was happening?

**Mr Lewis:** What the problem in the search process was?

**Mr Tascona:** What is involved in the birth relative searches, and what was the problem?

**Mr Lewis:** They didn't have enough staff; that was clearly true. They had an extremely high caseload that is dropping naturally, because adoptions are dropping in this province. Undoubtedly, a lot of people aren't asking any more because they have learned it is not going to—

**Ms Churley:** Or died.

**Mr Lewis:** Yes, or died. A lot of people have just died off, it's true.

The basic problem was that the process does involve mandatory counselling, which is time-consuming. They didn't have all the tools for the search, and they're getting some of those now. For instance, they are now hooked into the Ministry of Transportation's driver data bank. They are tied into another one, which I just learned about. They now have access to vital statistics, which didn't happen before. I don't think they've gone right across the country on that, but they've got them here.

They've been maximizing voluntary matches by comparing databases with private adoption registers; that's been happening. I think a lot of it was they just didn't have enough people; it was truly under-resourced for the mechanics they had.

Ms Churley is right, the process is onerous; it's a tough one. It just doesn't lend itself to a fast resolution, and so once you're into it, you've got to spend a lot of time on it. I gather that whether the people who are the recipients of the service like it, many of the people doing it are really very serious about it and take it seriously. I think that's it.

Now, there are different views as to how it should be done, and I think that's what you're talking about; you've got other ideas.

**Ms Churley:** This process is ridiculous, it's time-consuming, costly—

**Mr Lewis:** Well, there you go.

**Ms Churley:** —most in the adoption community in this day and age, which is why—

**Mr Tascona:** I just want to finish that point. You're talking about an administrative process?

**Mr Lewis:** Yes, sir.

**Mr Tascona:** Is there going to be allocation not just for manpower but technological—

**Mr Lewis:** Technological advances as well as staffing?

**Mr Tascona:** Yes.

**Mr Lewis:** Yes, I understand there are some—out of the \$2.4 million, it's going to technological; 24 staff won't cost that much money.

**Ms Churley:** I can actually answer to some extent because I follow this closely. One of the good things that's happening right now and will be very helpful if we do move towards a different system—they're not exactly centralizing all the records. I think we're the only province in Canada which has all records really decentralized, which makes a bit of a problem for the new system we want to put in place. But what they are doing is finally connecting all of the centres, however many there are—there are quite a few—by computer, so finally information can be retrieved centrally from all across the province. And now, as far as I know, they're trying to deal with implications of that—who should get the information, under what circumstances, what information when, that kind of stuff—under the existing legislation. But there are some really good advances being made in the centralization of the records in that sense, in terms of the connections through the computer system.

**Mr Lewis:** I understand there was an announcement made in the House this afternoon with respect to that. Is that correct?

**Ms Churley:** There was?

**Mr Lewis:** Yes, so I'm told.

**The Chair:** Ms Mushinski, did you have a question?

**Ms Mushinski:** Actually, Mr Tascona asked the question.

**Mr Tascona:** I wasn't finished, Mr Chairman, but I am now.

**Mr Wettlaufer:** Clare, you talked about a current caseload and you mentioned that one thing you would look to is that there wouldn't be any more cases coming in in a year than would be handled in a year. Coming from the business world, at one point I considered a current caseload getting done today what came in today. There are times of course when that can be extended to as much as a month but it would be unacceptable for a caseload to go beyond a month. In one of the cases we were discussing here, you mentioned 18 months. What would you consider to be an acceptable current caseload?

**Mr Lewis:** It varies. It varies on the complexity of the individual case, there's just no question about that. We have cases in our office, for instance, that we believe should be disposed of within three months. We've got lots of others that are disposed of the same day and within two weeks, but these are very quick matters and they don't become very formalized. But once we get into a true investigation, we then start to look at, what's the



three-month, what's the six-month? If it gets to nine, then you've got to start worrying.

I have to tell you, I don't know of any of these agencies that don't have some considerably longer, but I can say that Mr Norton thinks they've got rid of most of their old cases in human rights. By "old" cases I mean some of them were probably several years old. We all know that. I don't know of any complaints agencies that haven't had those experiences. Personally, I feel it's not the business world and there are in fact internal differences to the process, but I think a year is a long time in a complaint and I hope to be working more in the six- to nine-month range at our tops. We're not there yet, but we're working on it.

**Mr Wettlaufer:** What about some of these other agencies—the Human Rights Commission, for instance? What is your opinion of what would be an acceptable current caseload?

**Mr Lewis:** If the Human Rights Commission were doing its cases within a year, I'd say that was an amazing success.

**The Chair:** Any other questions?

Mr Lewis, do you have any wrap-up that you might want to make?

**Mr Lewis:** I'd like to tell you that we're working on our annual report now. They told me I can forget the weekend. It should be coming out in about the middle of June. It's filed with the House through the Speaker, and the committee is always copied. I don't believe the Ombudsman has been invited before the committee to discuss the report in several years. I encourage you to have me in and, I guess, put me through it. I'd be happy to discuss it with you. It will have, first of all, my message, but it will also have, aside from financial information which is also there, a number of small case stories about the scope of the work we do, the kinds of

complaints, ones where we uphold them, where we don't uphold them, whatever. There will be some corrections from FRO, from human rights and other agencies. Then there's a pile of statistics that go with it as well. They may well be of interest to you. You may want to discuss them, and I'd be happy to talk to you about it—areas where we think we're doing well or maybe we could do better. So I'm asking you to have me back.

**The Chair:** We certainly will do that. I think your first report should be presented by you, or certainly discussed by you. Needless to say, it's a lot easier to keep this group together if it's prior to the day that the House rises. You're suggesting the end of June.

**Mr Lewis:** I think it should be the middle of June.

**The Chair:** If it's the middle of June, I'm quite sure we'd be quite satisfied.

**Mr Lewis:** I want to say I'm pleased that the Ombudsman is now dealing with this committee.

**Ms Churley:** Early June would be better. Wait, we're getting partisan here.

**The Chair:** I know nothing. I'm just suggesting the middle of June might be OK.

**Mr Lewis:** That's my story and I'm sticking to it.

**The Chair:** Any other questions of the Ombudsman?

I would just like to pass on our sincere appreciation. Again, good luck in your endeavours over the next five years. We certainly look forward to meeting with you on quite a regular basis. We appreciate it.

**Mr Lewis:** If I could just say one final thing, I do appreciate the confidence of the committee in nominating me for this position. I hope over the next five years I'll justify your confidence.

**The Chair:** We appreciate you coming.

I don't think there is anything more on the agenda. We will meet on May 11 at 3:30.

*The committee adjourned at 1654.*

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**Official Report  
of Debates  
(Hansard)**

Thursday 11 May 2000

**Journal  
des débats  
(Hansard)**

Jeudi 11 mai 2000

**Standing committee on  
the Legislative Assembly**

Status of Bill Pr4

**Comité permanent de  
l'Assemblée législative**

Classement du projet de loi Pr4



Chair: R. Gary Stewart  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Thursday 11 May 2000

Jeudi 11 mai 2000

*The committee met at 1542 in committee room 1.*

## STATUS OF BILL Pr4

**The Chair (Mr R. Gary Stewart):** Good afternoon, ladies and gentlemen. We will call the meeting to order. The reason for the meeting today, what is on the agenda, is a draft bill that has been sponsored by Mr Bob Wood. We are here under the standing orders to decide or to consider if this bill is appropriate to be either a private bill or a public bill.

We have with us Susan Klein, legislative counsel, who will go through some of the things you received in your packages regarding their concerns for it to go one way or another, with some possible recommendations. Susan, I will let you take over.

**Ms Susan Klein:** Actually, instead of reading my written opinion to you, I would like to provide some context for the question that's before this committee by explaining a bit about the nature of private bills. The area is admittedly obscure.

The question for the committee to decide is whether this bill may be introduced as a private bill or must be introduced as a public bill. This is a procedural question and not a legal question or a policy question. It isn't relevant to this discussion whether it is a good thing or a bad thing to pass this bill or whether there are any objectors to its passage. The only question is whether this bill should be introduced in the Legislature as a private bill or as a public bill.

The members of the committee are very familiar with the process by which public bills proceed through the Legislature. Private bills follow a less well-known and less public procedure. First of all, they are initiated not by a member of the Legislature but by an applicant who is an individual, group or corporation outside of the Legislature. This applicant is seeking a benefit for the applicant only. Even though the sponsoring member's name appears on the front of a private bill, the bill is considered to be the applicant's bill. The applicant, and not the member, instructs legislative counsel on the drafting of the bill and the applicant, not the member, can decide at any time to withdraw the application. The standing orders also hold the applicant responsible for the costs of printing the bill and the act after it passes.

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cant, not the member, can decide at any time to withdraw the application. The standing orders also hold the applicant responsible for the costs of printing the bill, and the act after it passes.

The standing orders establish the procedural requirements that must be met before a private bill may be introduced. The applicant must publish notices stating the nature and object of the application, and the applicant must pay a fee of \$150 to the Legislative Assembly and file various documents with the Clerk of the House.

Having complied with these requirements, the applicant's sponsor may move that the bill be given first reading in the House. In contrast to the rules for public bills, the standing orders do not allow for an explanation of a private bill in the House when it is introduced. Also unlike public bills, private bills stand referred to the standing committee on regulations and private bills after first reading and do not receive second reading until after clause-by-clause consideration in committee.

If the standing committee approves the private bill, it reports the bill to the House, without any discussion or debate. If a private bill is amended in committee, the standing orders allow it to be considered further without being reprinted, unlike public bills, which must be reprinted after amendment and before being considered further.

Almost invariably, second and third reading of private bills takes place without any accompanying debate or discussion in the House. In sum, all the public discussion and debate on the merits of a private bill ordinarily takes place not in the House but in the standing committee on regulations and private bills.

Another significant procedural difference between public and private bills is that the French Language Services Act does not apply to private bills, so they are usually presented in English only.

A consideration of the private bill process suggests that it is designed to deal expeditiously with matters that do not require the attention of the full House; that is, matters of a private or localized nature that do not alter the general law or affect the public at large. This view is supported by the rules of parliamentary procedure that govern the kinds of bills that can proceed as private bills. Simple compliance with the requirements of the standing orders is not the only precondition for introducing a private bill. If it were, we would find that the legislative process is pretty much for sale for the price of \$150.



Here are some of the rules of parliamentary procedure respecting private bills that I have learned over the course of a 10-year practice. A private bill cannot amend or repeal a public act. It cannot affect public policy. It cannot affect a large area or a large number of persons who are not a party to the application. It cannot be used to obtain something that is already available under general law. It cannot bind the crown.

Once enacted, a private act is not administered by a minister of the crown because, after all, it does deal with a private, not a public, matter. This last point accounts for the fact that private bills do not contain provisions authorizing a minister or the Lieutenant Governor in Council to make regulations and that private bills do not come into force on proclamation.

What a private bill can do is obtain for the applicant a benefit not available under the general law, or an exception from the general law without altering the general law applicable to the public. I have found it useful to understand the concept by considering an act of divorce as the classic historical example of a private act. When divorce was not legal, an individual could nonetheless get a divorce by applying for and obtaining an act specific to his marriage. Clearly, this is an act that affects the named individuals and makes no change in the general law.

To give a more modern perspective, here are some examples of Ontario private acts in recent years: acts to revive an applicant corporation that cannot be revived under the general corporate law; acts to cancel property taxes on an applicant's property; acts to permit an applicant professional association the exclusive right to control the use of its professional designations, though not to affect the right of any person to practise that profession; acts to permit an applicant post-secondary institution to grant specified degrees to its graduates; and acts to give an applicant municipality certain powers, for example, with respect to trades licensing, animal control or heritage property, that it doesn't have under general municipal law.

The one characteristic that ties together these diverse private acts is that they affect the applicant, but they do not alter in any significant way the general law. For example, when a corporation is revived by private act, other corporations are affected in that they can now sue and be sued by the revived corporation. But the law about revival of corporations is only changed for the applicant to the act, and not for other corporations.

1550

In arriving at my opinion about the particular application before this committee, I have thought about the bill's nature and its public effect. This bill would allow certified general accountants to practise in limited-liability partnerships. This means that non-negligent partners are not held personally liable for their partners' negligence. This means that in suing for negligence, you can only name the negligent partners in the lawsuit and you can only collect from the partnership assets and from the personal assets of the negligent partners. This

changes very substantially the way that these partners are held accountable to the public and the way in which the public can institute civil proceedings for a CGA partner's negligence. While appearing on its face to merely give a benefit to CGAs, the bill actually alters the general law applicable to the public in the areas of liability and access to the courts. In my view, this takes the bill beyond the private realm and into that of public policy.

The applicant argues in its written memorandum to the Chair of this committee that the public policy issues were debated and resolved when the Partnerships Act was amended to create limited-liability partnerships. But those amendments provide that further legislation is required every time a profession seeks the right to practise in limited-liability partnership form. So far, only chartered accountants and lawyers have obtained such legislation, both by way of public legislation.

In my view, new questions of public policy are raised for each different profession. At the standing committee that considered the Partnerships Statute Law Amendment Act, 1998, counsel for the Ministry of Consumer and Commercial Relations, in his opening remarks on the general nature of the bill, said: "This type of status may not be appropriate for all professions. The legislation is structured in such a way as to provide an opportunity for the government and the Legislature to consider the policy issues relevant to each profession including the extent of liability exposure, the availability of insurance and the sophistication of the clients."

Another way of looking at this issue is to consider the private bill process and ask the following question: Is it appropriate to deal with the liability of a class of professionals by an expedited process, or is the effect that this bill will have on the general public such that it really should be dealt with by the comprehensive process that applies to public bills?

**The Chair:** Before I ask if there are any questions of Ms Klein, I want to welcome the group that just came in. It's my understanding they are folks from across Canada, hired by the Canadian Parliamentary Association, and they're preparing to work as interns in parliaments throughout South Africa. Are you heading out fairly soon?

**Interjection:** Next week.

**The Chair:** Well, on behalf of this committee, good luck to you. It will be quite an experience for you. Welcome.

Are there any questions of Ms Klein regarding her submission?

**Mr Brad Clark (Stoney Creek):** Can you explain to me why, in a previous submission from the legal counsel for the Legislative Assembly, they stated that a private bill would be appropriate for this situation?

**Ms Klein:** You're talking about when the Partnerships Statute Law Amendment Act was before the standing committee?

**Mr Clark:** Yes.

**Ms Klein:** And the statement was that you couldn't amend the CGA act by public legislation?



**Mr Clark:** No. The original position of legislative counsel, as I understand it, was that it was appropriate for this amendment to take place through a private bill. That was the original position, as I recall seeing it before. Now we have a different viewpoint from legislative counsel.

**Ms Klein:** My understanding is that when the Partnerships Statute Law Amendment Act, 1998, was before the standing committee, a motion was requested by one of the opposition members to amend the bill to provide LLPs for CGAs. A motion was prepared and advice was given to the opposition party asking for the motion. I know this because I was given the document. I was given the memo by the CGAs. Legislative counsel said that the CGA act could not be amended by a public act, because the CGA act was a private act. I don't think he said it was appropriate to amend by private—I don't agree with that statement. I don't think that was right. We reviewed it in our office.

**Mr Clark:** So there's a difference of opinion?

**Ms Klein:** No. I think the view of our office as a whole, and we've reviewed that statement, is that incorrect information was given the first time. The opinion of the office of legislative counsel is that public legislation can amend private legislation.

**Mr Clark:** You stated earlier in your preamble that private bills cannot deal, in essence, with something that is public policy that should be coming through the Legislature.

**Ms Klein:** By the public bill process.

**Mr Clark:** There was a bill that was passed, and I can't remember the name of it, actually, for Redeemer College. First off, they were enacted by a private bill, and then there was a bill sponsored by the former member for Wentworth-Burlington which granted the power of that college to issue degrees. It was a private bill. Isn't that public policy?

**Ms Klein:** It's a very localized thing. It's when one institution is allowed to grant specific degrees to its graduates. We've been doing those things by private legislation for a long time, but I think it's specific and localized and I don't think it affects the public at large. It doesn't say what universities in general can or can't do or that post-secondary institutions can or can't behave in a certain way, or no post-secondary institution in Ontario can provide a course in a certain subject, or all post-secondary institutions in Ontario must provide a phys ed class to all their first-year students. That's not it. It doesn't apply across Ontario, it applies to specific institutions, and so I think it is of a private nature.

**Mr Clark:** I think, Mr Chair, we find that perhaps we're into some grey areas. I think we would all agree.

**Ms Klein:** I don't think there's a right or wrong answer. The question is whether or not in any particular case you think this is dealing with a matter of public policy. People can disagree on that.

**Mr Clark:** In the case of Redeemer College, they were enacted by a private bill, they are now allowed to grant degrees by a private bill and the next bill that's coming before a committee is to change their name to

Redeemer University College. I think you would find a number of people who would argue that there's some crossover there on private and public policy. My point is, it would appear to me that there is a difference of opinion. I think there was a difference of opinion in Legislative Assembly counsel. I recognize that you've changed your opinion but, by the same tack, we have a private bill here and they were enacted by a private bill, correct?

**Ms Klein:** Yes. The CGA act is private legislation.

**Mr Clark:** That's fine.

**Ms Marilyn Churley (Broadview-Greenwood):** I'm just wondering, instead of asking a question right now or making a comment: There are two others who are going to give deputations. Can we do that so we can hear both sides and have a better understanding of both sides? Would others agree with that?

**The Chair:** Mr Crozier, is that OK with you? OK. We'll keep you on the list.

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** Are you referring to Mr Wood and Ralph Palumbo? Is that who you are referring to?

**Ms Churley:** Bob Wood is on the agenda—

**The Chair:** Mr Wood and Mr Palumbo.

**Ms Churley:** I'm just thinking it might be beneficial if we heard from them before we continue on.

**The Chair:** If everybody is satisfied with that, we'll call on Mr Wood.

**Mr Bob Wood (London West):** As the committee knows, I'm asking for the bill to proceed as a private bill. We've had a couple of legal opinions, and ultimately the interpretation of the rules in this case is up to this committee. The committee is going to have to hear from all sides and decide what the proper interpretation should be.

The bill which is before you today lets certified general accountants enter into limited liability partnerships, as permitted by the Partnerships Act. The chartered accountants and the lawyers of course already have this privilege. The bill has been advertised as required by the rules. As far as I know, no objections to the bill have come from any quarters.

There were two objections raised to proceeding with this as a private bill. One is that a multiplicity of interests is involved, and the second is that public policy is affected. It's my view that the multiplicity of interests was dealt with by the amendment to the Partnerships Act, as indeed was public policy changed. I think the two objections are not being dealt with by this bill but have already been dealt with by the amendment to the Partnerships Act.

1600

It's my submission to the committee that the bill is procedurally right. It seems logical that you might amend a private act by a private bill, and that's what we're asking to do. The bill is certainly very well supported and I think it's a substantively good bill. I would urge the committee to do the right thing procedurally, which I think is to let the bill proceed as a private bill, and let's



do what the people want and get this bill passed as quickly as possible.

I propose to present a motion. Do you want me to do that now, Mr Chair?

**The Chair:** No. I think we'll wait until we hear from the other people. Are you finished, Mr Wood?

**Mr Wood:** I am.

#### CERTIFIED GENERAL ACCOUNTANTS ASSOCIATION OF ONTARIO

**The Chair:** We will call on Mr Palumbo, please.

**Mr Ralph Palumbo:** I am here on behalf of CGA Ontario. I've prepared a brief and you have it, so I will be very brief.

It was two years ago tomorrow that I appeared in this room before the justice committee to argue that CGAs be extended the same benefit as the others that were mentioned in the bill. A lot of effort has gone into the last couple of years to get legislation before the Legislature, so you can imagine we are very pleased that this committee is now reviewing and considering this private bill.

Not to repeat everything that has been said, but I might just say again that our governing statute is a private act; this is a private bill. It doesn't change policy, it doesn't make policy, it simply announces to the public, once it is passed, that CGAs now can form LLP partnerships. That is the extent of the policy that is being decided here, in my view.

I would ask you and urge you to pass this bill, because I think it's something that was anticipated would happen even at the justice committee. Thank you very much.

**The Chair:** Thank you, Mr Palumbo. I'm going to ask you to stay in your seat, if you would, so that you may answer some questions if there are some directed to you.

**Ms Churley:** Ms Klein, the thing that struck me about your presentation in particular was that you said that it doesn't matter, in your interpretation, whether this is a good bill or a bad bill or whether or not everybody supports it, that it's the principle at stake here.

Before I get to my question, let me say this. I certainly understand an argument you gave that in some circumstances we have to take each individual case into account, when you're bringing it into an area of law, and the differences there might be. We would say, notwithstanding that you said that's not the issue here, that in this case it's a good thing, and those kinds of concerns you have, I feel, from my understanding, would not have a negative impact, and it's basically the same situation as the others that were already by law brought into limited partnerships.

I have two questions, then, out of what you said. Are you concerned more that by doing this it sets some kind of precedent? I fully believe that no harm is going to come from this. The second thing is, to your knowledge, are there other situations in the past where a private bill similar to this has passed that you had objections to?

**Ms Klein:** I'm concerned about the procedural question. If you say, "I think this is a good thing; I think

this is OK," that leaps over the procedural question. In making this determination, the committee has to separate itself from the substantive question, and the only substantive question I guess is, does this affect general law; does this affect public policy; is there a side to it that is public policy and therefore you would like to see it debated to the fullest extent by the process that is allowed for public bills?

As for precedent, hopefully every case is distinguishable. If the determination is that this doesn't deal with public matters, then hopefully that should stand on its own. We can see all the professional association private acts come forward now and registered property standards officers can form LLPs now. They're not forming a line yet, but there's a long line of similar acts like the CGA act. I think that door would be open. I don't think we could say to subsequent professional associations who are governed by private acts that they cannot get a private act allowing them to form LLPs. That particular door would be wide open, I think.

The second question was, have I seen this before, where something that dealt with public policy was allowed to go forward by private legislation? I'm trying to think. Not without a fight.

**Ms Churley:** The only reason why I ask it—and I should tell you at the outset that after my careful examination of this I'm not going to accept your analysis today. Or what I should say is that I'm supporting letting this bill go ahead. But the one thing you said that caused me some concern is that I fully accept that this is the analysis of the people before us and that there's no harm done. I know you want to stay away from this, but it's part of what we're talking about here. This is a good thing and in fact should have been there in the first bill in the first place. It's catching up in a way and adding what should have been done already.

My only concern from what you said is that there could be other circumstances within the context of what you said that I would feel: Yes, this particular group has a different set of criteria, deals with a different clientele etc. There could be differences. I might not, under other circumstances, want them included without a full, public debate.

All I'm getting at is it's my understanding that we take these on a case-by-case basis and, if there were any concerns expressed, then it wouldn't certainly go through just because this one does.

**Ms Klein:** On the question of whether other ones could go ahead by the private bill process would be answered by this determination. I've also indicated that if the members of the House think this bill is a good thing, I don't see a procedural objection or procedural obstacle to bringing this bill forward as a public bill, whether it's a government bill or a private member's public bill, which amends the CGA act. In that way, my procedural concern would not be a problem, and the procedural concern for subsequent professions seeking LLP status. Subsequent professions seeking LLP status then, all the determination, all the discussion of whether it's appropriate for



those particular professions, will be done by the private bill process, if that's what they want, and that's first reading in the House, go to standing committee on regulations—

**Ms Churley:** I guess that's what I'm asking you to be really clear about. If we allow this to happen—that's why I asked about a precedent.

**Ms Klein:** I think it is a precedent: Any other professional association that is governed by private legislation wanting LLP status by amending their private legislation will not get any objection from my office as to process. They will comply with the standing orders for private bills, pay their money, do their advertising, get it sponsored, introduce it in the House, and all the policy questions about, do we want registered something-or-other to be able to have LLPs, will be made in the private bill process. That's why I've tried to separate this from the substantive question of whether this is a good thing.

1610

**Mr Bruce Crozier (Essex):** I want to say at the outset that I am proudly a certified general accountant. I'm a life member of the association and until 10 years ago in business practised my profession.

Notwithstanding that, I don't see any conflict of interest, because we deal with issues in the Legislature that involve lawyers and accountants and doctors and everyone, and so generally it is something I am interested in but not something that affects me specifically. In fact, I am not sure they would even want me practising any more after being a politician for seven years.

I have a couple of brief comments. The opinion was referred to earlier by Mr Clark, that was given by Michael J. B. Wood, legislative counsel, on May 12, 1998, to the NDP caucus. There were two parts to his memorandum. One said that the motion refers to a matter that's not within the subject matter of the bill, so the Chair would probably rule it out of order.

The second part was that the motion cannot amend the Certified General Accountants Act, 1983, directly. The 1983 act, unlike the 1956 act, is a private act and cannot be amended by a public bill. If it can't be amended by a public bill, then it would seem to me the only other way it could be amended is by a private bill, and that's why I support essentially what has been said by each of us here.

As it relates to affecting public policy, I think it has already been decided that limited liability partnerships, as they affect public policy, are accepted and that is in the Partnerships Statute Law Amendment Act, 1998. The fact that this is another accounting body that's seeking limited liability partnership has no effect on public policy, as far as I am concerned, because that has been determined already.

In my view, to support that, when the budget was introduced, the Honourable Ernie Eves, as part of that budget speech and the notes to it, said that the government has decided they will go forward with allowing self-employed professionals to be incorporated, which really is limited liability. So, in that area of public policy—we're talking about partnerships here—the

government has also said that incorporation, and therefore limited liability, is acceptable.

This is simply allowing the certified general accountants to enjoy a privilege that's given to others. I agree with the comments that really what we want to do is the right thing and, I will even dare say, to use common sense. We should proceed with this bill as a private bill.

**Ms Caroline Di Cocco (Sarnia-Lambton):** Actually, with regard to what was in the budget, that was part of my discussion as well, because it was suggested in that budget to allow professionals to be incorporated, and there was a sense that was the way it was going to go anyway.

With regard to the procedural question, if I could, you say that on one hand the issue of public policy means that it's going to affect various groups. This is an individual case, and it's one specific group. This doesn't mean it's going to affect other groups outside the area. Again, it's the same as the college that was passed, in that it didn't in the end affect all the other colleges, it just affected that specific area.

I'm certainly not legal counsel, but there was just an interpretive element about what's one group and what's the general public. I'm suggesting, when I heard you speak on that, regarding how it affected public policy versus when a private bill affects one specific group, I interpreted this as just one isolated case, and it doesn't impinge on another group in that case. In the discussion that I've already heard, I do feel that this is quite in order, unless you have something to add to that.

**Ms Klein:** I just wanted to say that what I meant by impinging on other groups and having an effect on other interests is not other professional associations, although that was a question Ms Churley raised, and of the precedent that it raises. When I say that it enters into the public realm because it affects the public, I mean that the public consumers of CGA services who are not party to this application are going to be affected because one side of the coin is protecting liability and the other side of that coin is the shortfall to the person suing for negligence. If somebody's liability is protected, those assets aren't available to the person suing for negligence and who has won a suit for negligence. That's who I mean by affecting the public, not other associations. That's why it looks like an ordinary private act; it's just giving a benefit to the CGAs, but I think because of the substance of it, and then dealing with something like liability and negligence and how we can sue CGA partners, that it affects the public generally. It affects those third parties who aren't a part of this.

**Ms Di Cocco:** So you're saying that the procedure, then, thus does not become public. Is that what is in question here when it comes to the procedural question? This is not debated in public when in fact you're suggesting it may affect the general public.

**Ms Klein:** I'm saying this may affect the general public, and things that affect the general public should be dealt with in the more public forum that public bills follow.



**Mr Tascona:** I have a question for legislative counsel. I just want to ask you a question. Is it procedurally proper for a private act to be amended by a private act?

**Ms Klein:** Yes, it is.

**Mr Clark:** Section 44.2 of the Partnerships Act: "A limited liability partnership may carry on business in Ontario only for the purpose of practising a profession governed by an act...."

My first question is, what is the definition of an act? It's not in that actual act. It says here that limited liability partnerships may carry on business if there is an act that governs a specific profession. Is there not an act that's governing the CGA?

**Ms Klein:** That gets into a legal question which isn't really what I would want—

**Mr Clark:** This is legislation, so, yes, it's a legal question.

**Ms Klein:** Yes, but the issue here is procedural, not legal. An act is an act. A private act is an act, a public act is an act. "Is the CGA act an act governing a profession?" is a legal question, frankly. It's arguable that by an act governing a profession, legislation means an act of a licensing nature or a registration nature, an act that restricts who can practise, who can do certain acts, who can carry out accounting work, who can be a doctor. You can't practise medicine unless you're a licensed doctor. You can't practise law unless you're a member of the law society. You can't mix up drugs unless you're a pharmacist. Those are licensing acts that govern a profession: the profession of medicine, the profession of law, the profession of accounting in the sense of the Public Accountancy Act.

I think the CGA act is an act governing the CGA association. I don't think it is an act governing the profession of certified general accounting or an act governing the profession of accounting. It is an act governing the activities of the Certified General Accounting Association of Ontario. I think there is a legal question as to whether that is an act governing a profession or not, and the argument may be made that it is not an act governing a profession but an act governing a professional association, and there is a distinction.

1620

**Mr Clark:** Quite legitimately, based on the Partnerships Act, it could be very easily argued that the CGA is in fact governed by an act, and 44.2(a) states that the act "expressly permits a limited liability partnership to practise the profession." In this case you have a private act which constitutes a governance act, as far I'm concerned, through the CGA and they need to amend that private act in order to allow for limited partnerships. I think part of the difficulty is that we have legislation that has already been passed by this House that deals with the public issue itself and sets out very clearly in terminology that this is a private act and doesn't state the difference.

**Ms Klein:** No. The phrase is—

**Mr Clark:** It's an act, so I think we are—

**The Chair:** Could I interrupt just for a minute? The system is jammed. If you'll just give us a couple of

seconds, Mr Clark, you can go back and re-ask your question, please.

**Mr Clark:** I think we're on sound ground to go ahead and allow this private act to proceed.

**Mr Wettlaufer:** I'd like to ask a question of Mr Palumbo. Are the members of your association obliged to carry E and O liability insurance?

**Mr Palumbo:** Yes, they are.

**Mr Wayne Wettlaufer (Kitchener Centre):** To what limit?

**Mr Palumbo:** To a minimum of \$1 million.

**Mr Wettlaufer:** I think what we have here addresses one of Ms Klein's concerns, the issue of protection for the public. If the members of the association are obliged to carry at least \$1 million E and O liability insurance, that covers off one of her concerns, ie, protection for the public.

One thing we have to be aware of as well is that the limited liability partnership act does not give the blanket protection that it once did. It was once used by partners or shareholders of a corporation to prevent any attachment to any of their personal assets. That, in actual fact, in law no longer is the case. If a partner or a shareholder or a director is guilty of gross negligence, or intentional acts, the limited liability partnership act no longer protects them from attachment to their personal assets or attachment to their spouse's personal assets. So I believe that some of Ms Klein's concerns are covered off here.

**The Chair:** Thank you, Mr Wettlaufer. I just caution everybody that this is a procedural question, not necessarily what various parts of the existing act do.

**Mr Wood:** Would it be in order, Mr Chair, for me to move a motion?

**The Chair:** If you would just let me go around the table first, Mr Wood.

**Ms Churley:** Could I ask you, had you tried to bring this forward as a public bill?

**Mr Palumbo:** In fact, we did. Following the justice committee hearings, the parliamentary assistant to Minister Tsubouchi indicated that the ministry would be looking at this and working with us. Unfortunately, that just didn't happen and we were alternately told that the bill should be in one form and another, just because, as Ms Klein said, it's a very difficult issue. But we finally settled on this because the public bill wasn't coming. We think it's appropriate in this case, since we have a private act that governs our association. But we did try, yes.

**Mr Wood:** Are you ready for my motion yet?

**The Chair:** Just a moment, Mr Wood. Any other questions? Now, Mr Wood.

**Mr Wood:** I move that draft Bill Pr4 is the proper subject matter for a private bill.

**The Chair:** Any debate on the motion?

**Ms Churley:** I wasn't contemplating that the motion was going to be that firm in recommending that this be proper for a private bill. I'm just trying to think if there is—

**Mr Wood:** That's the drafting I was given, actually.

**Ms Churley:** Oh, was it? By legislative counsel?



**Mr Wood:** In this case, I'm prepared to support it.

**The Chair:** As I mentioned, Ms Churley, this is a procedural question. I think the wording of the motion certainly addresses that question.

Is there any other debate? Then we'll call the question. All in favour? Carried unanimously.

Any other business of the committee?

*Interjection.*

**The Chair:** No, Mr Tascona, not just yet. I appreciate you want to get home on a Thursday night, but Bill 42 has been referred to this committee and a subcommittee meeting will be called to discuss how this bill should proceed in committee. So we will advise you of that very shortly.

Now we can adjourn, Mr Tascona.

**Mr Tascona:** Bill 42. What's the title?

**The Chair:** I will read it for you. This is from the Ministry of Consumer and Commercial Relations, An Act to enhance public safety and to improve competitiveness by ensuring compliance with modernized technical standards in various industries. One industry, I understand, is the carnival industry. So it's a fairly important bill. We will meet with the subcommittee and discuss how we go from here.

**Ms Churley:** I'll try to make the next subcommittee meeting.

**The Chair:** OK. Thank you very much for your co-operation. The meeting is adjourned.

*The committee adjourned at 1627.*







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## Legislative Assembly of Ontario

First Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 1 June 2000

# Journal des débats (Hansard)

Jeudi 1<sup>er</sup> juin 2000

## Standing committee on the Legislative Assembly

Technical Standards  
and Safety Act, 1999

## Comité permanent de l'Assemblée législative

Loi de 1999 sur les normes  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Thursday 1 June 2000

Jeudi 1<sup>er</sup> juin 2000*The committee met at 1551 in committee room 1.*

## SUBCOMMITTEE REPORT

**The Chair (Mr R. Gary Stewart):** Good afternoon, ladies and gentlemen. We'll call the meeting to order. The first bit of business is the report of the subcommittee. I will read it, if I may.

"Your subcommittee met on May 17, 2000, and has agreed to recommend:

"(1) That the committee commence consideration of Bill 42, Technical Standards and Safety Act, 1999, on Thursday, June 1, 2000.

"(2) That the Canadian Institute for Environmental Law and Policy be invited to appear as a witness before the committee for a half-hour time slot.

"(3) That clause-by-clause consideration commence on June 1 following the witness presentation. If available, amendments may be filed with the clerk by 12 noon on Tuesday, May 30, 2000.

"(4) That the Chair, the clerk and the subcommittee be authorized to attend the annual meeting of the National Conference of State Legislatures in Chicago on July 16 to 20; and that approval of the House be sought."

Is there a mover on this?

**Mr John O'Toole (Durham):** Mr Chair, I have a proposed amendment.

**The Chair:** You have to move it first.

**Mr O'Toole:** I move the report of the subcommittee. With your permission, I would submit an amendment to paragraph 2.

I move that paragraph 2 of the subcommittee report be amended by adding the Operating Engineers Advisory Council as a witness.

**The Chair:** Any debate on that? All in favour? The motion is carried. Shall the subcommittee report, as amended, carry? Carried.

TECHNICAL STANDARDS  
AND SAFETY ACT, 1999LOI DE 1999 SUR LES NORMES  
TECHNIQUES ET LA SÉCURITÉ

Consideration of Bill 42, An Act to enhance public safety and to improve competitiveness by ensuring compliance with modernized technical standards in various industries / Projet de loi 42, Loi visant à accroître

la sécurité publique et à améliorer la compétitivité en assurant l'observation de normes techniques modernisées dans plusieurs industries.

CANADIAN INSTITUTE FOR  
ENVIRONMENTAL LAW AND POLICY

**The Chair:** We will move on to the agenda. The first witness for Bill 42 is from the Canadian Institute for Environmental Law and Policy. If you would introduce yourself, sir, please. Welcome to the committee.

**Mr Mark Winfield:** Thank you, Mr Chairman. My name is Mark Winfield and I'm director of research with the Canadian Institute for Environmental Law and Policy. I'm pleased to be able to address Bill 42 here today.

The Canadian Institute for Environmental Law and Policy is an independent, not-for-profit environmental law and policy research and education organization. We were founded in 1970 as the Canadian Environmental Law and Research Foundation. You may be wondering why an environmental organization is here today to talk about a bill that deals with public safety and consumer affairs issues. Really, the reasons are that we have actually just completed a study on the Technical Standards and Safety Authority, which is central to this bill.

What drew us into this was that the institute a few years ago undertook a study on the regulation of underground storage tanks and it was published as a book called Toxic Time Bombs. One of the things we looked at was the fact that it was actually the Ministry of Consumer and Commercial Relations rather than the Ministry of the Environment that regulated these things. That's what gave us an introduction to this.

In 1996, in the course of doing the annual report that we do each year on changes to environmental laws, institutions and policies in Ontario, we came across something called the Safety and Consumer Statutes Administration Act, which had been passed in June 1996. What this act did, among other things, was to provide for the creation of the Technical Standards and Safety Authority. The authority was one of four so-called delegated administrative authorities which were created to take over regulatory functions of the Ministry of Consumer and Commercial Relations. The TSSA and the other authorities are private, not-for-profit corporations to

whom the administration of the statutes administered previously by MCCR were turned over. In the case of the TSSA, it's the statutes related to elevating devices, amusement devices, fuel storage, boilers and pressure vessels, so a fairly broad range of things related to public safety.

In addition to being private, not-for-profit corporations, the other important feature of the delegated administrative authorities seemed to us to be the fact that the majorities of their boards of directors were drawn from the economic sectors of the industries they were supposed to regulate. This seemed to us to raise a whole range of questions around political and legal accountability and about the potential effectiveness of these organizations.

In the following year, we received some funding from the Law for the Future Fund of the Canadian Bar Association and two private foundations to do a more detailed study on the implications of the TSSA and its sister organizations. We're tabling the results of that study today, which I understand you've been provided copies of. It is essentially our brief on Bill 42, because the legislation deals with a number of issues central to our findings with respect to the TSSA.

In the course of our study, we identified a number of significant concerns regarding the delegated administrative authority model, most clearly illustrated by the TSSA. The first, and perhaps one of the most significant, was that underlying the creation of the delegated administrative authorities was the notion that government would steer and the authorities would row. In other words, that government would give policy direction but that the authorities would actually implement government policy, so it was possible to distinguish between policy and administration.

One of the problems we identified with this model, though, was that when the government passed the statute creating the authorities, it failed to actually give them any clear policy direction. All you see in the statute is some vague references to providing for a safe, fair and competitive marketplace. There was no clear mandate given, for example, in the case of the TSSA to protect public safety or the environment or how such concerns were to be balanced in relation to the economic interests of the regulated industries. In our view, Bill 42 compounds this problem because it removes what policy direction is provided in the existing legislation administered by the authority, and I'll come back to the reasons for that in a minute.

The second area of concern that we identified with respect to the delegated administrative authorities was the issue of the status and the composition of the board of directors. Here, as we said in our original study, there seemed to us to be a potential for the institutionalization of conflict of interest as an organizing principle of public policy, in the sense that you had people who were essentially the regulatees in the position of potentially being the regulators. In our study we highlight in particular the lack of clear conflict-of-interest rules to deal

with precisely that situation either in the statute, in the administrative agreement between the MCCR and the TSSA or in the TSSA's bylaws, to deal with the particular situation where the interests of the economic sectors from which directors come are potentially affected by what the TSSA does.

The third major area of concern that we identified was the issue of accountability. Here what we found is that as a private corporation the TSSA escaped most of the normal accountability structures that apply to government agencies. For example, it's not subject to oversight by the Provincial Auditor. It's not subject to oversight by the Ombudsman and oversight under the Ombudsman Act. It was not originally subject to oversight by the Environmental Commissioner under the Environmental Bill of Rights. It's not subject to the Freedom of Information and Protection of Privacy Act, so the status of the records is different in terms of public access. It's not subject to the lobbyist registration requirements. If you lobby the TSSA or its sister organizations, you don't have to register with the lobbyist registrar because it's a non-governmental entity.

#### 1600

The government did take steps to bring the TSSA back under the requirements of the Environmental Bill of Rights, but it remains outside of the requirements of these other statutes, the Audit Act, freedom of information, Ombudsman, all of those things. We regard this as a fairly serious gap, particularly in light of some of the concerns that have come up in the last few weeks around oversight and accountability, and particularly when government functions are transferred out of government. We also note that the formal accountability structure that was created for the Ontario-delegated administrative authorities is significantly weaker than that established for similar authorities in other jurisdictions.

In the course of doing our study we looked at similar organizations in the United Kingdom, New Zealand, Alberta and at the federal level. In each of these cases we saw that explicit provision had been made for the maintenance of parliamentary oversight, that they remained subject to oversight, where it is appropriate, by auditors general, ombudsmen, and, where appropriate, subject to freedom of information and protection of privacy legislation.

In terms of Bill 42, what all this means is a number of things. Basically what Bill 42 does is consolidate the seven safety-related statutes administered by the TSSA, but it also does something else which is very significant. In our view, it strips out all of the substantive provisions of the existing statutes and replaces them with general authority for the Lieutenant Governor in Council to make regulations instead. So where you look at something like the Elevating Devices Act, you see there are a whole bunch of specific prohibitions about requirements to get licenses, prohibitions on operating unsafe devices, requirements for investigations if something goes wrong. All of that is being removed and simply replaced by



authority for the Lieutenant Governor in Council to make regulations instead.

We would object to this in principle anyway because it, in effect, diminishes the role of the Legislature and increases the discretion of the executive in terms of policy-making. But in this case it's a particularly severe problem because of the nature of the TSSA, because it means there's even less direction given to the authority by the Legislature in terms of in what direction to steer. In practice, in our view, because effectively almost all of the Ministry of Consumer and Commercial Relations technical and policy expertise in the areas of regulation handled by the TSSA went to the TSSA, it seems to us that the content of whatever regulations might be made by the Lieutenant Governor in Council is inevitably going to strongly reflect input from the authority. In effect, the authority would be put into the position of steering as well as rowing, and that is precisely what the Minister of Consumer and Commercial Relations at the time, Norm Sterling, said would not happen when the authority was created. The basic problem here is that the authority isn't accountable to the public in any concrete way for the policies it makes in the way the government is. You can't unelect the directors of the TSSA in the way that you can unelect the government if you didn't like what it does.

There are a couple of other specific problems we've identified in the bill. One in particular that's been drawn to our attention are the provisions of section 36. What this does is to give extremely broad discretion to the statutory directors. You have to understand that, because of the way the delegation works, the TSSA's vice-presidents act as the statutory directors for the purposes of the delegated legislation. It effectively gives them the power to waive or to vary the requirements that are set in the regulations. So even if the Lieutenant Governor in Council actually gives a direction for the regulations, there's then a power given to the authority staff to set aside those directions and do something else.

With respect to what to do with Bill 42 in the context of this, as we expressed in our report, we are in the position of having to oppose the bill in principle. We also note in this context particularly the removal of the substantive provisions from the existing legislation, which we cannot support. We also note that earlier drafts of the bill did in fact retain some of the key provisions of the safety-related legislation, but these have all been taken out in the version that was actually introduced into the House in December.

Specifically what we would suggest, and this reflects the recommendations you see in the final chapter of the report, is that steps be taken to strengthen the accountability framework for the delegated administrative authorities and to bring them into line with what other jurisdictions have done. You'll see section 42 of the bill already contains a reference to the Environmental Bill of Rights and the Gasoline Handling Act. We would specifically suggest that the bill be amended to bring the delegated administrative authorities under the Freedom

of Information and Protection of Privacy Act, under the Ombudsman Act, under the jurisdiction of the Provincial Auditor, and to bring those lobbying the TSSA under the requirements of the Lobbyists Registration Act.

We would also like to see the opportunity taken to clarify the mandate of the delegated administrative authorities, particularly TSSA, to give clear priority to protection of public safety and the environment in the execution of its duties. We would also like to see the possibility of some consideration being given to amendments to strengthen the independence of the board of directors. In particular, you'll see we've made a recommendation that the act be amended in a way that would require that a majority of the directors of the board be independent of the economic interests which are regulated by the authority.

I'll close there and would be pleased to answer any questions you might have.

**The Chair:** Thank you, Mr Winfield. Questions?

**Mr Jean-Marc Lalonde (Glengarry-Prescott-Russell):** Just one question. Right at the beginning you said you were concerned about the underground holding tanks, which comes under MNR at the present time.

**Mr Winfield:** No, it actually was under Ministry of Consumer and Commercial Relations. The regulatory responsibility was transferred to the Technical Standards and Safety Authority when the administration of the Gasoline Handling Act and the Energy Act delegated to the authority.

**Mr Lalonde:** Are you referring to the fuel tanks?

**Mr Winfield:** Yes. The underground storage tanks for gasoline at gas stations would be the most obvious example.

**Ms Marilyn Churley (Broadview-Greenwood):** As people will know from the amendments I put forward—and I apologize for them being so late; we got caught up in other issues last week—I have obviously seen this report and have put forward some amendments to reflect some of the concerns as outlined by you today. Perhaps you could expand on this a little bit. I guess we're all extremely conscious of what happened in Walkerton. I believe you alluded to that, although you didn't say "Walkerton." I assume what you were saying was that unless we're very careful here that there's accountability, it could be an accident waiting to happen. I suppose that's how I'm interpreting what you said.

**Mr Winfield:** I think that would be a correct interpretation. Our concern is that the authority's mandate very clearly deals in public safety and in the safety of devices and activities which Ontarians deal with and encounter in their everyday lives. We've dealt with the authority staff quite a lot in the course of doing the study and we're very impressed with their consciousness of these issues, and they're concerned by them. But one also has to look to the future and the possibility that the current staff may be replaced by others who may not be as conscious of these matters. At that point, oversight by the auditor and the Ombudsman and the Environmental Commissioner becomes very important, because those



are how we get early warnings of the potential for trouble.

We do know from events in the last few weeks that there were concerns expressed by legislative officers about the situation, or at least the circumstances that may be related to the situation which has arisen in Walkerton. One would want to have those early-warning systems in place in this case, because again you're dealing with very basic public safety issues and at the moment those structures are lacking. I think it's of particular concern given the newness of the model and the need for independent oversight and also the gap between what was established in Ontario when these kinds of entities were created relative to what was done in other jurisdictions, which was to very clearly establish that kind of accountability framework from day one.

**Mr O'Toole:** I'd just like to thank you very much for your presentation. You have spent considerable time analyzing, and I appreciate that as a public service to the people of Ontario. You draw to our attention the importance of the letters patent, and I'm certain you've reviewed those yourself. For the record, it's to promote and undertake activities which enhance public safety, including training, certification, licensing, registering, audit, quality assurance and other things. It's a comprehensive list that probably adds to what exists today in a framework where, I believe, the ministry remains responsible for the public safety statutes and regulations and oversees TSSA's performance. It has oversight authority.

As such, you raise a very good point. If there is a conflict of some sort, ultimately the question does go back to the government, to the minister or to the Premier. It's important that the public's interests that you respect today, I also respect. Others may want to comment on this legislation that's before us in clause-by-clause. There are amendments before us as well and we hope to address some of those.

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**Mr Winfield:** I would just very briefly make a couple of points in response.

We've looked at the letters patent; there are a couple of concerns there. One is the degree to which they indicate the substantive definition of the TSSA's mandate and direction by the TSSA itself, rather than by the government. That's a concern because the whole underlying notion behind this model was that the government is supposed to give direction and then the authorities are supposed to follow it. That's quite important from an accountability framework perspective. As one of my co-authors of the study put it, rather than giving direction in which to row, the government provided a boat and said, "Pick a river." The authority filled the gap, as it had to do, but the concern is also, though, that there is a duality to the mandate which has emerged. We've seen in some of the statements from the board of directors and others that they do seem to have as much focus on competitiveness and economic concerns to regulate sectors as they do on public safety regulation. That concerns us,

because the experience in Canada with organizations where there's been a mixing of regulatory and promotional roles is not a pretty one. We've had some very serious developments that way.

We also have some concerns, and these are all laid out in the report, about the capacity of the government to oversee the authority. All of the expertise, in effect the entire technical standards division of the MCCR, went to the TSSA, so all of the policy and technical expertise moved over with the authority. You're left, really, as I understand it, with about five staff who are in charge of looking after TSSA, plus the other four delegated administrative authorities, plus the new home warranty program, plus, I think, either the cemeteries or funeral homes—I can't remember which. There's some concern about the oversight capacity and there is also, as I say, again in the context of the bill, the degree to which the government is going to be able to respond to what the authority might suggest in terms of the regulations that might be made under this bill to replace the substantive provisions of the statutes.

I'll just leave it there. That's sort of where we're coming from in terms of our concern.

**The Chair:** Any other comments on the debate? If not, Mr Winfield, thank you very much for your presentation, sir.

**Mr Winfield:** Thank you, Mr Chair.

#### OPERATING ENGINEERS ADVISORY COUNCIL

**The Chair:** The next delegation is from the Operating Engineers Advisory Council; if you would identify yourself to the committee, sir. Welcome.

**Mr Norm Stinson:** My name is Norm Stinson and I'm the chairperson of the Operating Engineers Advisory Council, which advises the Technical Standards and Safety Authority in matters concerning, currently, the Operating Engineers Act.

I'm also the chief operating engineer at CAMI Automotive at Ingersoll and have been an operating engineer for about 40 years—I'm giving away my age here.

I am presenting today as the chair of the Operating Engineers Advisory Council, which, as I mentioned, supports the TSSA and, through them, the Ministry of Consumer and Commercial Relations.

The council was the former board of review and it was advisory to the technical standards and safety division of the MCCR. The council consists of stakeholders from the power plant industry who are drawn from both labour and owner/user interests.

Since the formation of the TSSA, the members of this council have worked closely with the TSSA staff to review and provide input into the proposed Technical Standards and Safety Act. In addition, we have rewritten the accompanying power engineer regulations—or, I should say, the draft of those. In this process, we have received presentations from several interested stake-



holders representing industry associations, thus providing us with a broad perspective of the issues.

It is our understanding that the draft act has had second reading in the Legislature. We believe that its enactment will enhance public and industrial safety in Ontario. The operating engineers of Ontario have a proud record of power plant safety, which the new act will help maintain.

The Operating Engineers Advisory Council appreciates this opportunity to address the committee regarding the proposed Technical Standards and Safety Act concerning two issues.

The first one is the term "operating engineer" versus "power engineer." The term "operating engineer," which is used in the existing act, we feel is outdated. "Power engineer" would be more consistent with the other provinces, except for Quebec. "Power engineer" is consistent with the SOPEEC, the Standardization of Power Engineering Examination Committee, which is a move towards standardizing qualifications and standards across Canada. "Power engineer" is more descriptive of certified personnel who operate and maintain power plants, and "power engineer" is consistent with the Institute of Power Engineers, which is a chartered professional organization across Canada.

The existing Operating Engineers Act regulations refer to "operating" and "stationary." Those are basically one and the same, but the two terms get bandied back and forth.

All other provinces call such people power engineers, as I mentioned. In British Columbia, the right to this title was won in the courts. I understand it went all the way to the BC Supreme Court.

We are working towards national standardization of education and qualifications through IPEC and SOPEEC. I mentioned SOPEEC before; IPEC is the International Power Engineering Curriculum. The Institute of Power Engineers has been a certified national organization, as I mentioned, since the 1930s. The members are operating engineers, primarily, and power engineers in other provinces.

In the interests of consistency and standardization, we request that in the new act and regulations all references to "operating engineer" or "stationary engineer" be eliminated and replaced with the term "power engineer." Thus, we would expect to see the new regulation be the power engineers regulation and for certificates of qualification to refer to us as "power engineer."

The second item is, we would like to have the act include wording to ensure the effective continuance of industry advisory councils. The board of review is written into the existing Operating Engineers Act as an advisory body to the MCCR. Since the formation of the TSSA, we have operated as the Operating Engineers Advisory Council. This was a change based on mutual trust and it has worked out well. Other groups of stakeholders also have advisory councils. Each is expecting to have input into the act and their relative regulations, including administration, both now and in

the future. We have no reason to believe that this will not continue, and we are interested in maintaining the existing format. We have a letter of commitment from John Walter stating that we would have that support from the TSSA.

**1620**

The councils are an important link between the MCCR and TSSA and their stakeholders. Their existence provides a measure of trust between the parties, a means for stakeholders to influence the content and administration of the act and regulations, a valuable resource to both the TSSA and MCCR for both technical support and advice, as well as feedback on non-technical issues.

Many stakeholders feel they need some assurance that legislative changes will not take place without their knowledge and an opportunity to advise. We have seen past occasions when controversial changes were made to the Operating Engineers Act regulations without consulting the board of review or other stakeholders, except for a partial group who were lobbying for specific changes. Unfortunately, this leaves some stakeholders with distrust of the process. To establish the future of advisory councils, we request that the new act include wording to support the existence and functions of each of the advisory councils as they exist today.

At the present time, each council is expecting to have input into the formation and administration of each of the respective regulations to follow this act. In the future, as in the past, it is expected that changes will be made to each regulation, as required, to help assure safety in Ontario. To assure continued stakeholder input into the regulations and their administration, I would suggest this wording change that we request. This should include a requirement that the respective advisory council be consulted and given the opportunity to make recommendations with respect to all proposed changes before they are made. Of course, we recognize that the TSSA and MCCR would not be bound to follow those recommendations.

I thank the committee for this opportunity, and request full consideration be given to these requests. These two items will do much to achieve stakeholders' acceptance of the new legislation. We would appreciate a response if that's possible.

As a footnote, I must represent some of our stakeholders in that some of the stakeholders are concerned that the act may be passed ahead of the regulations. I understand that's not the normal way of doing things, but I just want you to be aware that some people are concerned that if the act goes through without the regulations, they may not be able to have any influence on the regulations.

**The Chair:** Thank you, Mr Stinson. Any comments or debate? Ms Churley? No. Government members?

**Mr O'Toole:** Thank you very much, Mr Stinson. I respect the professional CV you provided here. Certainly you have 40 years of valid observations. As you are probably aware, in the development of this framework legislation there were extensive consultations with over



200 individual groups. In your response you can acknowledge if you were or were not involved. But it's my understanding that the TSSA has committed to continue that further consultation process, that model.

What this really does, in my understanding, is put the regulatory support for these seven acts into a framework that's more flexible, more accessible. Certainly under the letters patent TSSA is still ultimately responsible for ensuring public safety. It's also your responsibility, as you've done today, to bring to the attention of the TSSA concerns you might have, some of which may be technical and safety in nature and some of which may have other motives, if I could leave it at that.

Technically, in my short time here, on two or three occasions we've had groups come with us to help define "technician," "technologist," the whole sensitivity around some of these terms. I didn't realize it was so intimidating or territorial, but I think the same provision applies with the term "engineer." This trade, as well recognized, as well respected as it is in Ontario, probably serves as a model for the rest of Canada as it is. I think I've sort of responded to the two points. The continued consultations—it's on record; you've been here, and I thank you for that, to put it on the record and hold us accountable. It's a continuous review process, the model they've developed. I hope that, respectfully, responds to some of the issues you've raised in your presentation.

**Mr Stinson:** We do recognize, of course, that you would not want to put into the act that the council be a formation accountable directly to the MCCR. But perhaps you could make the legislative agency—perhaps the administrative authority could be made responsible for maintaining those councils. As long as the TSSA is that authority, I don't think many of us have much concern, but we don't know where this is going in the future.

**Mr O'Toole:** If I may, without starting a dialogue, there's one other a small point. I do believe ultimately the overarching responsibility rests with the government, whoever that is. So you're not absolved; you're kind of at arm's length, and I think that's important to put on the record.

The other point I was trying to make was that, something you mentioned in your presentation, the act would pass before the regulations. Quite honestly, that's the way it happens. In my limited experience, you pass the bill and you sort of cross your fingers that the regulations will support that. I'm not trying to be too flippant there.

**Ms Churley:** You've got it.

**Mr O'Toole:** It's important to be vigilant. I think the delegations we've had today are testimony that you have come here, unsolicited and unfettered, through whatever means, and are being heard, as you should continue to be heard.

**Mr Stinson:** I do appreciate that.

**Mr O'Toole:** They'll be gazetted. I think as the regulations go, that's the formal process. They would be published and you would have a chance to comment then, if not before the development.

**Mr Lalonde:** On the second page, the back of the copy that you've given us, in the paragraph which starts, "At the present time," you indicate, "I would suggest that the act include wording to support the existence of advisory councils as they exist today." Where would you see that in the act? Could you tell us where it should appear in the bill?

**Mr Stinson:** Precisely what page or what section, I'm not sure.

**Mr Lalonde:** This would prevent me from reading this whole thing over again. If there's an amendment to be brought forth, we would—but at the present time I'd just like to know which section you refer to.

**Mr Stinson:** I don't know. Can you help me on that one, John? Where should it go?

*Interjection.*

**Ms Churley:** Can we ask for some assistance from somebody who knows the act, where it might go?

**Ms Kathy Levine:** I'm Kathy Levine. There is no provision in Bill 42 for consultation with advisory councils, exactly. There's no express provision.

**Ms Churley:** He's looking for an amendment.

**Ms Levine:** That's right.

**Ms Churley:** We're asking where, if we were to make such an amendment, you would see it go within the existing—

**Ms Levine:** Legislative counsel might have some opinion on that, but it would be an addition to Bill 42. It would be a new section to Bill 42.

**Mr Lalonde:** It would be a new section; so we would have to study it a little further. The fact that we didn't get this notice before prevents us from doing some research on that. I do recognize the importance of consultation in this case.

**The Chair:** When we're finished with the delegation, we'll have legislative counsel come back up and give us some advice on that. Would that be satisfactory?

**Mr Lalonde:** Yes.

**Mr Jerry J. Ouellette (Oshawa):** You asked for the name change from "operating engineers" to "power engineers." When the Operating Engineers Act came forward, why was that recommendation not made at that time?

**Mr Stinson:** That was made—what year was that? I believe it's the second-oldest act in the Ontario government. That act was made before the turn of the century, if I'm not mistaken. It is a very old term.

**Mr Ouellette:** What I'm seeing in another piece of legislation I'm working on is that there are constantly changing names for various aspects of engineering and that the field is constantly diversifying. How do you come forward with a name that's going to cover all, so that the next time a name is changed or specifics applied, it can be applied without changing legislation?

**Mr Stinson:** I would not anticipate another name change if we've got this one. As I say, it would be consistent then with other provinces, except for Quebec.



**Mr Ouellette:** Yes, I see you've mentioned that in there. So you don't think there would be any other diversification of name change?

**Mr Stinson:** No.

**Mr Ouellette:** I know in the Professional Geoscientists Act, we're seeing a considerable number of name changes there.

**Mr Stinson:** Within the operating engineer group right now, we have first, second, third and fourth class. I would still see that continuing. You would have power engineer first class, second class, third class, fourth class.

**The Chair:** Any additional questions? If not, then, Mr Stinson, thank you very much for your presentation. We appreciate it.

**Mr Stinson:** Thank you for the opportunity.

**The Chair:** I'm going to suggest to the committee that we have about a 10-minute break so we can discuss the get some advice from the legislative lawyer to answer Mr Lalonde's questions, and if it could be done.

**Mr O'Toole:** How long? A couple of minutes, or what?

**The Chair:** Let's say five minutes. I think that's probably enough.

*The committee recessed from 1632 to 1644.*

**The Chair:** We'll call the meeting back. I would like to introduce legislative counsel, Chris Wernham.

As well, Mr O'Toole, you are the parliamentary assistant who is carrying this bill. Would you like to make some comments and indeed introduce the people with you, please?

**Mr O'Toole:** I just want to start by introducing the people who will be helping us to work our way through Bill 42. Immediately on my left is Allan Williams, policy adviser to the minister. We also have ministry staff: Rob Dowler at the far end is director of the marketplace standards and services branch at the ministry; Karen Golden, policy and agency relations branch; Katherine Levine, the scriptor of this bill; Scott James, industry self-management liaison unit; and Carol-Lynn Lepard, communications services branch. Many of us have read the things she sends us to help advise consumers.

Also with us today we have the Technical Standards and Safety Association, John Walter, president and CEO, and David Scriven, corporate secretary. Thank you for joining us. For the record, you might want to know that I also thanked the presenters earlier today.

I have a duty as parliamentary assistant to read into the record a preamble which hopefully will help us to go through expeditiously the amendments that are before us.

I'm pleased to speak in support of the Technical Standards and Safety Act and introduce it for clause-by-clause reading at the standing committee on the Legislative Assembly.

The purpose of this act is to enhance public safety in Ontario with respect to the operation of amusement and elevating devices, boiler and pressure vessels, the hydrocarbon fuel sector, the activities of operating engineers and upholsterers, and stuffed articles.

The act consolidates many—

*Interjection.*

**Mr O'Toole:** Stuffed full of what, is the question.

The act consolidates many fundamental elements presently found in the seven statutes governing technical standards and public safety that are being repealed. It establishes one streamlined framework and retains the essential elements of a licensing scheme. The technical standards in the current act would be transferred to regulations, which then can be amended more rapidly to keep pace with technology and developments. This would allow regulated industries to make improvements in safety equipment quickly as new technologies become available. The administration of these statutes has already been delegated to the Technical Standards and Safety Authority under the Safety and Consumer Statutes Administration Act, 1996.

The TSSA is accountable to the government for its performance under a legally binding administrative agreement which sets out the details of reporting requirements, financial arrangements and governance. The ministry retains responsibility for the public safety statutes and regulations, and oversees TSSA's performance to ensure public safety standards are maintained and, in many cases, improved.

To develop this bill, the Ministry of Consumer and Commercial Relations has worked in close co-operation with the Technical Standards and Safety Authority. The evidence to date indicates this administrative model is working well to enhance public safety.

The TSSA, a private, not-for-profit organization, can retain the fees it collects from the industries for the services it provides. Revenues can then be directly reinvested into public safety programs and services.

The TSSA has delivered services more efficiently than government has in the past. For example, figures indicate that the number of inspections has increased over the last five years for elevating and amusement devices, and the number of serious injuries from accidents has significantly decreased.

The TSSA has strengthened partnerships with associations and government organizations across Canada and the United States to promote a greater understanding of Ontario's public safety requirements. This is helping to achieve a greater degree of compliance among companies from other jurisdictions to allow them to operate safely in Ontario.

The legislation would pave the way for businesses in technical industries in this province to continue the very high standards they have achieved to date. This new legislative framework would reduce red tape for the industries by modernizing and improving the efficiency, responsibility and flexibility of the existing legislation, while at the same time enhancing public safety.

Streamlining is another key feature of the legislation. For example, the new legislation provides for uniform decision-making and appeals processes for all of the technical industries administered by TSSA. The new system would be simpler and more cost-effective for both TSSA and its stakeholders.

In developing the legislation, the Ministry of Consumer and Commercial Relations and TSSA conducted extensive consultations with industry specialists and consumer groups. More than 200 stakeholders were consulted in drafting the proposed new legislation, and TSSA is committed to further consultations on any of its future proposed regulatory changes. The consultations included representatives from large industry groups like Paramount Canada's Wonderland and Otis Elevator to small business representatives like the Independent Retail Gasoline Marketers Association. Consumers were also represented during the consultations through groups like the Consumers Council of Canada.

The bill is really a compilation of the best aspects of seven predecessor statutes, and I invite the committee members to commence its review in clause-by-clause.

1650

**The Chair:** Thank you, Mr O'Toole. We will move then to—

**Ms Churley:** Can I ask one question, or is that allowed under the procedures now?

**The Chair:** It's allowed, Ms Churley.

**Ms Churley:** See how respectful I am being here? I just want to ask you not really a technical question, but you mentioned that the number of elevator inspections has increased. You know I have a particular interest in this. Being the former minister, my name gets to be in them.

**Mr O'Toole:** That's right. I see your name in all of them.

**Ms Churley:** Actually, the question isn't specifically on elevators. You used elevators as an example of service increases. I know that revenues have gone up, and in certain cases user fees. What I'm wondering is if you have documentation in all the areas to back up your claim that you are in fact doing more inspections across the board.

**Mr O'Toole:** With your indulgence, I'll let Rob answer, but in a more lighthearted response I would say we're always doing more with less.

**Ms Churley:** And I go up and down with you every day.

**Mr O'Toole:** That's fine.

*Interjections.*

**Ms Churley:** I can't tell you how many times I used to hear that. OK, sorry.

**Mr Robert Dowler:** Unfortunately, I don't have the specific number with me in regard to elevators, but I can give you an overall number for TSSA.

**Ms Churley:** Actually it wasn't elevators. John used that as an example. I was interested overall and not in specific areas.

**Mr Dowler:** Overall, OK. Let's see. Prior to delegation to TSSA, the ministry conducted approximately 138,000 inspections per year. That number has increased to 178,000 under TSSA. That's across all the seven regulated sectors.

**Ms Churley:** In terms of fees, have there been across-the-board regular increases, or is it really uneven in terms of who's paying more for what they're getting?

**Mr Dowler:** My understanding is that the fee schedule has not changed dramatically since devolution to TSSA. There is a proposal, which is being consulted on right now, to rebalance the fee schedule. Some sectors are felt to be paying a little too much; some perhaps not quite enough.

**Ms Churley:** That's what I was getting at, actually.

**Mr Dowler:** That is a proposal which is being circulated at present, but to my knowledge it has not been implemented yet.

**The Chair:** We will move into clause-by-clause of Bill 42. Any additional questions, comments or amendments to the bill, and if so, to which sections?

**Ms Churley:** I want to move an amendment to section 3.

**The Chair:** We'll do that when we get there.

**Ms Churley:** Oh, I see. We have to do it in section 3. I haven't done this in a while. I forgot the way it works.

**The Chair:** I'm learning a little too, to be honest with you.

Shall sections 1 through 3, inclusive, carry? All in favour? Carried.

Your amendment, Ms Churley?

**Ms Churley:** Are we in section 3.1 now?

**The Chair:** Yes.

**Ms Churley:** I move that the bill be amended by adding the following section:

#### "DESIGNATED ADMINISTRATIVE AUTHORITIES

##### "Composition

"3.1 (1) Despite subsection 3(2) of the Safety and Consumer Statutes Administration Act, 1996, the Lieutenant Governor in Council may not designate an administrative authority as a designated administrative authority if a majority of its board of directors are representatives of the economic sectors comprising things governed by this act.

##### "Revocation of designation

"(2) The Lieutenant Governor in Council shall revoke the designation of a designated administrative authority in accordance with section 6 of the Safety and Consumer Statutes Administrative Act, 1996, if, at any time, a majority of its board of directors are representatives of the economic sectors comprising things governed by this act.

##### "Member appointed by minister

"(3) The term of appointment of a member whom the minister appoints to the board of directors of the designated administrative authority under subsection 8(1) of the Safety and Consumer Statutes Administration Act, 1996, shall be fixed."

**The Chair:** Do you wish to make any comments before I ask for debate?

**Ms Churley:** Yes, I do. Mark Winfield gave an overview of some concerns his organization has about



this. I want to apologize on the record again that I wasn't able to get the amendments to the committee earlier. I had meant to, and we were overtaken with other events.

I think part of the problem here is that this was like a big, fat technical bill and perhaps not a lot of people paid attention to it. I had the opportunity to sit down and meet with Dr Winfield yesterday or the day before, and he brought some of these issues to my attention at that time.

I should remind the committee that our party, the NDP, voted against the initial bill, and it's expressed very well in Hansard why. I believe Mr Martin, who is our critic for MCCR, indicated we would perhaps be supporting this bill. However, upon reflection and noticing some concerns, particularly in light of our earlier concerns on principle in many ways, I do have some major concerns. I've moved this amendment to deal with one of the major ones Dr Winfield expressed concern about, and that is possible conflict of interest and that the majority of the board of directors are representatives of the economic sectors they're actually serving.

I would ask for support for this amendment, because I believe it will deal with the concern around the issue outlined by Dr Winfield, and I'd be happy to answer any questions I can about it.

**Mr O'Toole:** I again want to respond by saying that I appreciate the input by Dr Winfield. I think it's important consumer advocacy, and I support that. However, in the context of this bill, this new section would not necessarily be in order, in my view. I'd abdicate to the legal counsel, but actually this would be covered in the Safety and Consumer Statutes Administration Act, which created the TSSA. In that respect, the governance issues could be addressed through that legislation, as opposed to adding them out of context. They're inappropriate for this section. Legal counsel, would you support that layman's impression?

**Ms Levine:** Yes. The SCSAA is the legislation that does establish the framework for delegation of regulatory authority over a delegated statute. That would be the appropriate legislation to deal with issues of the board of directors. In fact, it is addressed in—

**Mr O'Toole:** It's in Bill 54 already, which we dealt with last in 1996.

**Ms Levine:** That's right.

**Ms Churley:** What's in that bill?

**Mr O'Toole:** The board composition.

**Ms Churley:** What I'm trying to address here is what is within that bill then, and the same concern is expressed in my amendment here. I cannot understand why it can't be included as another section to 3 here to clarify, because this is the bill we're dealing with now. That bill has already gone through the Legislature and has been passed. How can I amend that bill, except to persuade the government to do it? I don't understand the legal reasons why, within this section here, which deals with the designation of certain—let me take a look at this a second. I don't see why it can't fit within the content of this section. This is a major public concern. That's the only way to address it within this bill.

**Mr O'Toole:** With respect to what you said, I'm putting it on record right now that the ministry is certainly committed to reviewing the administrative authority in the coming months, as constituted in what was the Safety and Consumer Statutes Administration Act. On the record, we are committed to reviewing the legislation which governs the model you're trying to amend here, the governance model, in the next few months. Your amendment, in the context of this discussion, could be sent to the minister. He's interested in reviewing it.

1700

**Ms Churley:** I have to tell you that although it was done very quickly, I was told by leg counsel, or at least my legislative assistant was told, that this amendment was in order. I don't know who he talked to, but I would like to get a clarification.

**Ms Levine:** I'd like to clarify my comment. It's more a question of where it is appropriately addressed rather than whether it's in or out of order, which I can't speak to. We have legislation that establishes a framework for not just the TSSA but for five delegated administrative authorities. So issues that pertain to the manner of delegation are the subject of the SCSAA. But as to what is in or out of order, I can't—

**Ms Churley:** So now you're telling me it's not necessarily out of order; that in your view you could see that it might be appropriate in another piece of legislation, but it's not out of order.

**Ms Levine:** No. That is not my call to make.

**Ms Churley:** Having said that, the motion is then still on the floor. I believe, if we're passing this piece of legislation today, that it's important to include this amendment in the legislation.

**Mr Brad Clark (Stoney Creek):** I have a couple of questions. Five administrative authorities, you mentioned, are covered under a separate act. Does that act address the appointment of the people on those administrative authorities?

**Ms Levine:** It deals with the board composition and has a statement that there have to be consumer representatives and industry representatives on the board. That's dealt with in the legislation. It also provides that the minister may appoint a minority of members to the board.

**Mr Clark:** So the minister may appoint a minority of members to the board, but there have to be consumers on the board also?

**Ms Levine:** In terms of the—

**Mr Clark:** Can you explain the board composition, so that I understand it?

**Ms Levine:** It is dealt with in section 8 of SCSAA, or Bill 54, as you still call it. It says, "The minister may appoint at pleasure one or more members to the board ... as long as" they "do not constitute a majority" and the composition includes representatives of consumer groups, business—

**Ms Churley:** Can you speak up a little? I'm sorry.

**Ms Levine:** I'm sorry.

**Mr O'Toole:** "The members appointed by the minister may include representatives of consumer groups, business, government organizations or such other interests as the minister determines."

**Mr Clark:** So that is a separate act. Is that correct?

**Mr O'Toole:** Yes, we're reading from the Safety and Consumer Statutes Administration Act, I guess.

**Ms Levine:** Yes, the SCSAA, as we call it, because it is such a long name.

**Mr O'Toole:** Bill 54.

**Ms Levine:** Bill 54.

**Mr Clark:** I don't support that we should be amending it and putting something in this act when it's covered under another act. That's my position.

**Mr Lalonde:** It's the word "may" that they just mentioned, "The minister may appoint." "May" doesn't mean "will be appointed." The minister could turn around and appoint only industry reps on it. I do recognize the importance of this amendment. This way we have at least some industry sector reps and some non-industry reps on that, according to the amendment she brought up there. So the word "may" doesn't mean that it must.

**Ms Churley:** We need to be clear. We're not leg counsel. I was advised that this amendment is OK and in order. I haven't been told otherwise yet, and we can argue whether it's in or out of order, but I guess we need confirmation of that. I believe it is in order, from what I've been told.

**Mr O'Toole:** To clarify the record, if I inadvertently said it's out of order, that's not—

**Ms Churley:** That's what you said.

**Mr O'Toole:** Yes, OK. Well, I correct that and say it's not essentially out of order, and I guess we could vote on it.

**The Chair:** If there are no other comments, we deem this motion to be in order.

**Ms Churley:** Can we have a recorded vote, please?

**The Chair:** Indeed.

#### Ayes

Churley, Lalonde.

#### Nays

Clark, Mushinski, O'Toole, Ouellette.

**The Chair:** The amendment is defeated.

The next one: Ms Churley, 3.2.

**Ms Churley:** I move that the bill be amended by adding the following section:

"Duties

"3.2 Each designated administrative authority shall exercise its powers and duties under this act in such a manner as to protect the environment and the health and safety of the public."

**The Chair:** Would you like to make a comment?

**Ms Churley:** Yes, I think this will add to the bill, to have it very explicit within the bill, and at this point it

isn't. Again, as Dr Winfield pointed out, when you as a government are busy putting all our safety laws and regulations into the hands of the private sector, it's important that we have stated as clearly as possible in writing within the bill the substantive duties of that non-profit private agency. So I actually don't see any reason why people wouldn't agree to having this in.

**Mr O'Toole:** In a general sense, the entire purpose of this act, the Technical Standards and Safety Act, is to enhance public safety. It's in the letters patent and it's in the mandate. In that sense it would be wrong to exempt them in any regard from that duty, due diligence in that mandate. This might imply that it's pointing it out as something it isn't doing otherwise, and I put to you that it is.

**Ms Churley:** That's all very well, and it's nice to take your word for it. But the problem is that there has been a stripping out of all the substantive elements that used to be there when it came under the ministry. Now the board of directors, as has been pointed out by Dr Winfield, and all the staff from this section within your ministry is over in this agency. They are going to be the ones in charge of writing these regulations, and because we're now in a situation during the transfer that we don't have these substantive elements in the legislation, I think it's important that we have this within the act.

**Mr O'Toole:** I again refer to the section of Bill 54, which is the genesis of this TSSA and which we will be referring to, and the designated administrative authorities' duties:

"7(1) A designated administrative authority shall carry out the administration of designated legislation delegated to it and shall do so in accordance with law, this act, the designated legislation and the administrative agreement, having regard to the intent and purpose of this act and the designated legislation.

"Additional activities

"(2) Nothing in this act restricts a designated administrative authority from carrying out other activities in accordance with its objectives."

In other words, I suspect it's just sort of repeating. It's clear that the request here—the environment and the health and safety of the public are implicit with respect to this authority of the TSSA.

1710

**Mr Lalonde:** I don't see the reason to add this amendment, because the purpose of the bill is to protect the environment and health and safety. This is exactly what we're saying in there.

**Ms Churley:** Could I ask a question? Could you explain to me—I understood what you just said, although I don't agree. That doesn't clear up the problem we have here with this particular piece of legislation. What would be your problem in having this added to the bill? How could it harm when it can only do some good in terms of substantively stating its duties and powers; that is, to protect to the environment and the health and safety of the public? That's what the entity is all about. In other



words, what problems would it cause? That's what I'm asking.

**Mr O'Toole:** In a general sense the previous NDP amendment, as well as this one, is dealing really with, in my view, Bill 54, the delegated authorities, as such, they were the genesis of the TSSA. In that, they do have responsibility in the broadest and specific sense to address public safety and the environment. I have some difficulty with why this amendment is adding something which—

**Ms Churley:** I'm sure you heard Dr Winfield's comments on this. He identified a number of weaknesses in the model. I think what we're trying to do here is improve it out of concern for—and let me put on the record that I have the greatest respect for John Walter and his staff. I work directly with John and I know first-hand about John's integrity. This is not in any way an attack on Mr Walter and the staff. I know they're dedicated.

This is simply trying to make a bill stronger in the public interest. I believe from what I've seen, and I admit I haven't had a lot of time to read it, but in my own initial review of it and in light of what Dr Winfield had to say, it appears to me that one of the problems is the failure of the government to provide the authority with clear policy direction—Dr Winfield made that clear—either through the SCSAA or the administrative agreement.

What you seem to be saying is, don't worry about it; it's taken care of in Bill 54. I don't believe it is. I believe we have to strengthen this bill and put this particular section in there. I still don't understand, John, from your comment to me, why it would be a problem to have it in this bill.

**Mr O'Toole:** In a general sense, the scope here in section 1, that we've already voted on, is the purpose of applicable definitions. "The purpose of this act is to enhance public safety in Ontario by providing for the efficient and flexible administration of technical standards with respect to the matters referred to in section 2." That lists the seven different statutes that are being combined.

**Ms Churley:** That's a pretty general overview.

**Mr O'Toole:** I think if you go back to 54—we read the section before—it's quite specific in its duties. The letters patent that we looked at earlier in Mr Winfield's delegation to us are also quite specific. We could just go on for 100 years on this one.

**Ms Marilyn Mushinski (Scarborough Centre):** I've spent so much time discussing separation of powers in the last few weeks that I need to get some understanding of this. It would seem to me that, first of all, in the title itself, Technical Standards and Safety Act, implicit in that is what's trying to be achieved in the amendment. I'm just trying to figure out what the governing legislation is here.

It's TSSA's responsibility to protect public safety. That's implicit in the title, right? It's also set out in its letters patent, correct? My understanding is that one of

the acts which TSSA is responsible for is scheduled under the Environmental Bill of Rights. Is that correct?

**Mr O'Toole:** Yes.

**Ms Mushinski:** OK. Is there any plan to change that under 42?

*Interjection.*

**Ms Mushinski:** OK. Is there currently some kind of a review underway with respect to the administrative authorities under this bill or under 54?

**Ms Karen Golden:** I think this bill deals with the technical standards and safety of the regulated industries, as opposed to Bill 54. This amendment is talking about the governance of all the different administrative authorities. With respect to the governance of the administrative authorities, my understanding is that staff are preparing to conduct a review of this administrative authority model through the summer. Changes that are purported to be made to all of the administrative authorities could best be reviewed in that context, in the context of Bill 54 and in the context of this cross-review, as opposed to putting in sections in an act that is seen to be a technical standards and safety act for one administrative authority. That would seek to somehow change the rules of governance across the board.

**Ms Mushinski:** Right. I couldn't have said it better myself. That's good.

**Ms Churley:** I understand what you're saying. I fundamentally disagree that we should just see this bill as a technical bill. That's in fact what a lot of people thought when they first looked at this big, thick bill. There's some independent analysis that is telling us that there are some fundamental problems and issues which we need to resolve while we're taking the public safety into account.

We have to pay attention to that. I take great issue today with saying, "Don't worry, we don't need to put it in here because we're going to deal with it in another place, in another bill, at another time." I don't think that's appropriate. We are dealing with environmental protection and we're dealing with public safety.

I believe that to any extent that we can strengthen it in this bill—because we know it's going to pass at the end of the day. It would give me some more comfort, unless there's some reason it shouldn't be in here. Beyond that, I don't accept that it is better dealt with later, in the future, down the road in another bill.

**Mr Clark:** With reference to the report from CIELAP, I had an opportunity to speak to Mr Winfield, and I raised the spectre that the ministry was telling me that there was going to be this review process of this other bill which would deal with all of the authorities. In light of that, would it be imperative that these things be in this act, or would it be more appropriate that we deal with it on the other side? He said: "There's merit to both, but if it doesn't get done here, we could still deal with it on the other side. It makes sense there also."

That's why I'm feeling comfortable with the suggestion that we deal with it with the review and look at it with all of the administrative authorities together. I hear

what you're saying. I'm just saying that in my mind it makes more sense to deal with it with the bill that deals with all of the authorities, as opposed to just one specific one and leave the other ones hanging. That is my position on it.

1720

**Ms Churley:** This could be used as a prototype. Is this review happening at this very moment?

**Mr Dowler:** If I could help with that, the terms of reference have been prepared for the review. We expect that the review will be conducted over the course of the summer and fall, and we hope to have a draft prepared in late fall.

**Ms Churley:** A draft prepared in late fall.

**Mr Clark:** With respect then, that gives us an opportunity, and it also gives Mr Winfield and yourself a real opportunity to look at these suggestions and deal with it with the review and incorporate your suggestions in that bill.

I'm not trying to be hard to get along with. I'm just trying to think pragmatically. Very sincerely, I have concerns about some of these things I spoke to him about. But I am comfortable in letting it go through the review process and dealing with it at that point.

**Ms Churley:** If I may, and I'm glad you talked to Dr Winfield about this, I'm never comfortable losing an opportunity to improve a bill and make it more responsive to concerns about safety.

There is a review happening and a supposed draft in the fall. We don't know what's going to happen with that. We're in a committee today where we have an opportunity in this particular bill to make a difference now. That is my argument. I don't feel comfortable that later down the road we have an opportunity. It may or may not happen. We're here now, dealing with this bill. I still strongly recommend that we take this opportunity to do the right thing and get this in the bill that's before us today.

**Mr O'Toole:** In the interest of the committee's time and also to respect the points being made by the member, the next few amendments, all dealing with additional sections, up to 3.5, I would suggest are valid concerns. You've heard that from other members, including myself. Respectfully to Mr Winfield as well, it would be more appropriate in my view—because this TSSA deals with seven acts and the designated administrative authority, Bill 54, is probably the place which you've been told by staff is going to be in a draft form in the fall.

I would support much, including, as one of your later amendments addresses, the Ombudsman's role. One of them is the Provincial Auditor's role in these designated authorities, as well as the lobbyist registration, all of which, by the way, were in the doctor's report, the Freedom of Information and Protection of Privacy Act, as well as the one we're dealing with now. They are at a higher order dealing with any designated administrative authority group, not just the ones dealt with in Bill 42.

What I'm saying is this: We can spend a lot of time on the same discussion on each one of them. I believe they

have merit. I would be encouraged to forward those to this review of Bill 54, which we have staff's assurance is being done, and I'm saying that on the record here. That would, in my view, be the appropriate place, and the debate we're having here is value added to the public safety discussion we're having.

**Ms Churley:** I would suggest then that we vote on the particular amendment I just moved, because I certainly have something very specific to say about my following amendments that you've just addressed. Perhaps we should vote on this one so I can get to the next one, so I can respond to what you said, unless there are any more questions.

**The Chair:** Additional debate on section 3.2?

**Ms Churley:** A recorded vote, please.

### Ayes

Churley.

### Nays

Clark, Lalonde, Mushinski, O'Toole, Ouellette.

**The Chair:** The amendment is defeated.  
Section 3.3?

**Ms Churley:** I guess I have to move these one at a time and discuss them.

I move that the bill be amended by adding the following section:

"Application of other acts

"3.3 Each designated administrative authority shall be deemed to be an institution as defined in the Freedom of Information and Protection of Privacy Act."

**The Chair:** Comments?

**Ms Churley:** I am going to take this opportunity. I know I have to read all of these others into the record, but I'll speak to them all at once, as Mr O'Toole did.

You will note that the next one is the lobbying one, the next one is the Provincial Auditor, and the next one is the Ombudsman.

**Ms Mushinski:** They all have to be read into the record.

**Ms Churley:** The reason why I really particularly want us to pass these today is that I would almost like to suggest that it was an oversight that it wasn't included in the first place. When you're transferring something as essential and important as this particular kind of public service over to a private agency, accountability to the public is of the absolute utmost importance.

A couple of people have alluded to the situation in Walkerton and the confusion around who's responsible to whom when you've got public labs. We have the situation where the second public lab, which did the tests in April and May, and their most recent tests, said that they didn't have to give the results to anybody but their client; they're a private lab. I'm sure that under the present circumstances and many investigations, that will be looked at, and regulations are being brought in. But



we cannot have a bill before us that transfers completely all of the safety acts under this ministry to the private sector and not have the accountability to the public and to the government built in. I just think it's absurd and that we would all want to include those in this act today. I think that would give many people a great deal of comfort.

We did hear Dr Winfield express that we have to be very careful with these things. When we transfer things that have been traditionally done by government, to the private sector, and it's happening more and more, accountability is of the utmost importance.

He also said, and you'll see it in his report, that this is not the first time that this kind of transfer has happened in other jurisdictions, but it's the only jurisdiction in his study that actually—I believe he cited New Zealand, England, France; I'm not sure, but I think those were the ones—did something similar, but in fact did build in this accountability structure. So I would urge the committee to at least support these particular amendments today.

**Mr Clark:** I stand by my earlier comments. We're at loggerheads; I understand that. I'm simply stating that these issues are more appropriately, in my opinion, dealt with after the review with the other act.

**The Chair:** Additional comments? Debate?

**Ms Churley:** Recorded vote.

#### Ayes

Churley, Lalonde.

#### Nays

Clark, Mushinski, O'Toole, Ouellette.

**The Chair:** The amendment does not carry.

On 3.3(2), and they have to be read in.

**Ms Churley:** I move that section 3.3 of the bill be amended by adding the following section:

“Lobbying

“(2) Each designated administrative authority shall be deemed to be a public office holder and an organization that employs an in-house lobbyist, as those terms are defined in the Lobbyists Registration Act, 1998.”

No discussion, just a recorded vote, unless other people support it.

**The Chair:** Any debate on this motion? Recorded vote then.

#### Ayes

Churley, Lalonde.

#### Nays

Clark, Mushinski, O'Toole, Ouellette.

**The Chair:** The motion is defeated.

Section 3.4, please.

**Ms Churley:** I move that the bill be amended by adding the following section:

“Audit

“3.4 The accounts and financial transactions of each designated administrative authority shall be audited annually by the Provincial Auditor.”

A recorded vote.

#### Ayes

Churley, Lalonde.

#### Nays

Clark, Mushinski, O'Toole, Ouellette.

**The Chair:** The motion is defeated.

Section 3.5 please.

1730

**Ms Churley:** I move that the bill be amended by adding the following section:

“Ombudsman

“3.5 The functions of the Ombudsman shall include investigating any decision or recommendation made or any act done or omitted in the course of the administration of a designated administrative authority and affecting any person or body of persons in his, her or its personal capacity.”

A recorded vote, please.

**The Chair:** Discussion? No.

#### Ayes

Churley, Lalonde.

#### Nays

Clark, Mushinski, O'Toole, Ouellette.

**The Chair:** The motion is defeated.

Shall sections 4 through to 16, inclusive, carry?

**Ms Churley:** Recorded, please.

#### Ayes

Clark, Lalonde, Mushinski, O'Toole, Ouellette.

#### Nays

Churley.

**The Chair:** Section 17, A government amendment:

**Mr O'Toole:** I move that subsection 17(1) of the bill be struck out and the following substituted:

“Inspection without warrant

“(1) An inspector may at any reasonable time, without a warrant, enter any lands or premises where the inspector has reason to believe, in good faith, any of the things, parts of things or classes of things to which this

act, the regulations or a minister's order apply are used, operated, installed, made, manufactured, repaired, renovated or offered for sale and carry out an inspection for the purpose of determining in the public interest whether,

"(a) this act, the regulations or a minister's order are being complied with; or

"(b) a hazardous condition exists."

**The Chair:** Discussion? Mr O'Toole, do you wish to make comments?

**Mr O'Toole:** No.

**The Chair:** All in favour of the amendment on the floor? Opposed?

Will section 17, as amended, carry? All in favour? Opposed? Carried.

Will sections 18 through 20, inclusive, carry? All in favour? Opposed? These sections are carried.

On section 21, a government amendment:

**Mr O'Toole:** I move that subsection 21(5) of the bill be amended by striking out "under subsection (1) or (2)" and substituting "under subsection (2)."

**The Chair:** Discussion on the amendment? All in favour of the amendment? Opposed? Carried.

Shall section 21, as amended, carry? All in favour? Opposed? Section 21, as amended, is carried.

Shall sections 22 through to 36, inclusive, carry? All in favour? Opposed? Carried.

Section 37: Two opposition amendments.

**Mr Lalonde:** I move that subsection 37(1) of the Technical Standards and Safety Act, 1999, be amended,

(a) by striking out "\$25,000" and substituting "\$50,000"; and

(b) by striking out "\$100,000" and substituting "\$1,000,000."

**The Chair:** Discussion, Mr Lalonde?

**Mr Lalonde:** No discussion.

**The Chair:** Mr Ouellette?

**Mr Ouellette:** Seeing that in subsequent follow-up, repeat offences are possible, I would be supportive of the amendment put forward.

**The Chair:** Any other discussion on this?

**Mr O'Toole:** As a clarification, being PA, I'm just wondering if I could ask legal counsel, is there discretion by the board or TSSA or is the money we're stating here an upper limit? Or is it an absolute that they enforce that amount?

**Ms Levine:** This is prosecution, so it would be up to the judge.

**Mr O'Toole:** Oh, the courts.

**Ms Levine:** It's up to the courts.

**Ms Golden:** It's a maximum.

**Mr O'Toole:** It is a maximum, but they could assign any subordinated amount to that?

**Ms Golden:** Yes.

**The Chair:** Any additional debate?

**Ms Mushinski:** Recorded vote, please.

**The Chair:** We have an amendment on the floor.

## Ayes

Churley, Clark, Lalonde, Mushinski, O'Toole, Ouellette.

**The Chair:** The amendment is carried.

Amendment, subsection 37(3), Mr Lalonde.

**Mr Lalonde:** I move that subsection 37(3) of the Technical Standards and Safety Act, 1999, be amended by striking out "\$25,000" and substituting "\$50,000."

**The Chair:** Any discussion on this amendment?

**Ms Churley:** It's the same situation where it's up to \$50,000, but it's the discretion of a court?

**Mr Lalonde:** Not more than \$50,000 instead of not more than \$25,000.

**Mr Ouellette:** Once again, in light of allowing for follow-up and repeat offenders, I think that's a necessary move.

**The Chair:** Any other discussion? If not, we have an amendment on the floor. All in favour? Opposed? Carried.

Shall section 37, as amended, carry? All in favour? Opposed? The section is carried.

Shall sections 38 through to 48, inclusive, carry? All in favour? Opposed? Carried.

Shall the long title carry? All in favour? Carried.

Shall the bill, as amended, carry?

**Ms Churley:** May I have a recorded vote, please.

## Ayes

Clark, Lalonde, Mushinski, O'Toole, Ouellette.

## Nays

Churley.

**The Chair:** Shall I report the bill, as amended, to the House? All in favour? Opposed? Carried. Ordered that the Chair report Bill 42, as amended, to the House.

We've got a couple of other things just before you go.

The following items need to be rescheduled: The review of the Clerk of the House, the review of the Sergeant at Arms and the review of the televising of the legislative proceedings. These were supposed to be on the 18th. Does the committee wish these items to be scheduled for June 8?

**Ms Churley:** It's just a sit-down to discuss the routines and procedures?

**The Chair:** As I understand, they do a report and it's sometimes an annual thing.

**Mr Ouellette:** I would recommend that the subcommittee meet and discuss what is necessary to proceed with that matter.

**The Chair:** You're going to have make another motion on that one. This was already approved and we were to do it on the 18th, except that we got bogged down that day. So it is approved. It's more on what date. If we can go ahead and schedule for June 8.



**Mr Clark:** Does it have to come before the committee or can the subcommittee deal with it, procedurally?

**The Chair:** The subcommittee recommends they come before the full committee. So everybody is in favour of June 8? OK.

The other thing is, the Ombudsman is planning to table his annual report on the morning of June 15. His assistant has called to ask if Mr Lewis could be scheduled at the afternoon meeting of the committee to

discuss that report, which will be on June 15. Is the committee in favour of that?

**Ms Churley:** When would the committee be meeting to discuss that?

**The Chair:** On the 15th, the same day, at 3:30. Is everybody happy with that? OK. Thank you very much. The meeting is adjourned.

*The committee adjourned at 1741.*







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Ms Kathy Levine, legal counsel, Ministry of Consumer and Commercial Relations

Mr Robert Dowler, director, marketplace standards and services branch, MCCR

Ms Karen Golden, senior policy adviser, policy and agency relations branch, MCCR

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## Legislative Assembly of Ontario

First Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 8 June 2000

# Journal des débats (Hansard)

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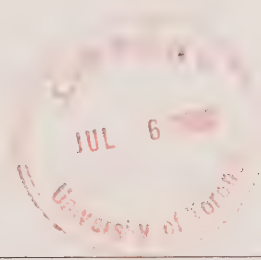
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLY

Thursday 8 June 2000

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Jeudi 8 juin 2000

*The committee met at 1538 in committee room 1.*BIENNIAL REVIEWS:  
CLERK OF THE HOUSE  
SERGEANT AT ARMS

**The Chair (Mr Gary Stewart):** We'll call the committee to order. We have three delegations. Welcome to all. Because I believe maybe there is a little bit of overlap in the three things you folks are doing, we will have you all together. I don't know what the protocol is, but if each one wanted to chat about their particular area, then we'll just go through the three, as on the agenda, starting with the Clerk, then the Sergeant at Arms and the executive director. I was going to say "age" but I thought, no, I can't use that as the start code.

Welcome. Thank you very much, and we'll turn it over to you.

**Clerk of the House (Mr Claude L. DesRosiers):** Thank you, Mr Stewart. It's a pleasure to be here. This is a procedure that was started not long after I came on board here in 1986. I would come in with the sergeant and answer questions and make sure that members were informed and at ease with the way the administration was running and so on.

Just to refresh your memory, the administration here is run by the Board of Internal Economy, which I like to refer to as the board of directors. They meet about every month and they make the main policy decisions and they adopt the budget for this place and bring to the table concerns that members have directly. They also address concerns that we put in front of them. I act as secretary to that board and, of course, you know the Speaker acts as chair of that board.

There is another committee that operates on a weekly basis, and on a daily basis often, and that's the management advisory committee. When this management advisory committee was created in the late 1980s, I started to appear before this committee to report on the activities of that committee. I chair that committee, and it's made up of Mr Clark, who is responsible for the security and for the building management; and Mrs Deller, who is responsible for the Legislative services. Also sitting on that committee are Mrs Nemanic, who is responsible for human resources, purchasing and finance; and Mary Dickerson, who is responsible for our excellent library facilities.

We meet every week and we have a fixed agenda. We discuss how we are best equipped to serve you. We all have the same job, basically, and that's to help the members do their job. That's why we're here and that's our mission statement and that's our reason for being.

I don't have a prepared statement. What I can highlight is one area where we have been spending a lot of time recently, and that is what we refer to as the capital plan. We'd be more than happy to answer questions on this and I hope that you might be made aware of the contents of this. It's a plan that was devised, that was imagined in the early 1990s in order to address the upkeep of this building, which is an important building. People have said—I have said—that it is the most important building in the province. I believe that firmly.

In the late 1980s, money had not been spent on this building for a long, long time and therefore the roof was leaking, the exterior stonework was literally falling down, it was dangerous, and the 100-year-old windows were rattling. We were approaching at that time the 100th anniversary of this building, so it was felt very important to do something about it.

A plan was put together and it was studied by a special committee of this House. Members looked at this plan and approved it and reported to the House with their approval. This has become our Bible. This has become our roadmap for looking after the maintenance of this place. Obviously, that all depends on money to a great extent.

We started with the most important one, and that was the exterior. It was important to secure the exterior. It was important to realize that if we didn't, we were literally going to lose the building. A new roof was put on. The stonework was completely overhauled. We had to import people from Scotland to do the stonework because we had nobody here who could do it. When those people were here, we got them to teach a course at George Brown College, so that we have our own young people now who are well-equipped to do this work. We also replaced most of the windows. As of that time, we could say that the building was secure from the elements and would withstand the effects of time.

The whole project as it was devised in the early 1990s was approximately \$100 million. The exterior part of that is about \$33 million, and that is what has been spent so far on the building.

We are approaching the board, we have talked to the board about this, and we are working with them to try to continue this project because, of course, it was difficult to do. Right after we finished the exterior the financial situation was a very tight one, and in 1996 the board said, "Well, wait a while." But now we have come back and we have said it's time to move ahead, for many reasons.

There is approximately \$60 million of work left to do to this building to bring it up to par and to shape; \$40 million of that is life and fire safety work. It's work that has to be done. The fire marshal has said, "Listen, I can't force you to do this"—because this is an old building, it's a heritage building, and it wasn't built to code specifications, that's for sure—"but I have looked at your plan"—and we have this on paper—"and I approve of your plan and this is what you should do in order to make the building safe."

So it's now time that we move forward, and we're proposing to move forward in four-to-five-year stages in order that in five or six years, at the most, we can say that the building is secure.

This building has its scary elements. That wonderful oak floor that was uncovered last year and that everybody is raving about—I have a piece of that wood in my office—has about an inch of pine as a subfloor all over the part of the building that didn't burn down in the first part of the century. That pine is now so light that it's like a feather. I mean, a spark in this place would be disastrous. We've discussed it with the fire marshal. There are many, many ways to make a building safe and the code prescribes many, many ways. One of those ways is to build walls to make sure that smoke—because smoke is probably the biggest killer in a fire—doesn't go beyond where the fire is. We can't do that in this building. We can't build a wall around the main staircase. There's just no way.

The next-best thing, and which the fire marshal has approved, is to make sure that there are funnels for which to evacuate the smoke. That is in our plans as well, but it's sort of urgent to get moving. I'm saying that the board is working with us and the board wants to do this; it's just a question of making sure that everybody's on side.

As of yesterday we have a committee of members. We had asked each caucus to put forward the name of a person to work with us in the implementation and, as of yesterday, we now have two thirds of a full complement because we don't have an NDP name. I don't think we're going to wait for an NDP name; we're going to go ahead. We have Ms Di Cocco from the Liberal Party and we have Brenda Elliott from the Conservative Party. We will be meeting with these people very, very quickly to start devising how best to go about this and to explain to them what the key problems are in getting this thing on the tracks.

That's one of the main things that has been pre-occupying me, apart from the House itself and apart from the general administration. But that's something that I really hold very, very dear to my heart.

I see Mr Peters has written to you, Mr Chair, about various items. I can assure Mr Peters and the committee that these are items that are dear to our hearts too, but that we have to address within the capital plan because everything is sort of like a series of building blocks.

1550

In the capital plan, the first thing that has to happen is finishing the fifth floor. Right on top of here there's wonderful space. What do you call that commission? The censor board used to sit up there and watch movies that nobody else in the province could watch. But this area has fallen into total disuse, so we would like to refinish that area to make it safe. It's absolutely not safe right now. That would be number one because we need to finish space in the building before we can do other things.

People often ask why we have the restaurant where it is. If you look in the master plan, you'll see that the restaurant is just above here; it's in room 228-230. That's where the restaurant was before it was moved down to the basement. If we move the restaurant to 228-230, what are we going to use for committee rooms? The space we would finish on the fifth floor would be the committee rooms. It's sort of a juggling thing, but the important thing is to get started. Hopefully you'll be hearing more about this.

We're going to try to do it in as much of a non-disruptive way as possible because, you see, one of my beliefs is that this place should not be a museum; it should be a living institution. So I think the challenge is to keep it up to modern age, as technology develops, as different ways of proceeding, of working develop, then make sure that this building goes along with that. Other buildings, to my great chagrin, have become museums. You can walk through them and see what offices used to look like in 1860 and so on, but I don't think that's what we want to do. So the challenge is to go ahead with the renovations but, on the other hand, the other extreme would be to shut the place down for two years. I don't think we want to do that either. I think we want to do it over a period of four or five or six years, at the maximum, to permit members to continue their work as work is going ahead, much the same as the renovations you've lived through. Sometimes, unfortunately, the dust gets around and so on, but it's livable. You can live through this. This is what we envisage for the future.

I'll finish that, and maybe Deborah or Dennis could talk to you about security.

**The Chair:** Then we'll take questions. Is that OK?

**Mr Jerry J. Ouellette (Oshawa):** I think we should do them now.

**The Chair:** That's what I'm saying. We'll do them all and then take questions.

**Mr Ouellette:** No, I mean questions individually.

**The Chair:** You want questions now?

**Mr Ouellette:** Yes.

**The Chair:** Fine. No problem with me.

**Ms Caroline Di Cocco (Sarnia-Lambton):** With the whole issue of renovation and restoration, there's the



functionality of the building you're working on that's really important, and the other one is a restoration of the historical integrity of the building. I guess it was a bit shocking when I'd go into rooms and there were partitions and all kinds of things that were done ad hoc, as people came in, that changed without any kind of plan. So when it comes to the functionality of the building, I think it's needed so that it functions and, as you said, it's a living building and it's usable. When it comes to the heritage integrity of the building, what aspect of that are you looking at in the overall plan?

**Mr DesRosiers:** We're trying to combine both. For example, in the refit of the chamber that took place last summer, it's a combination of both. We went back to the original colours. We went back to the original mouldings. When the mouldings were first devised, that's what they looked like. So we've gone back to that.

The chamber, of course, did not look then as it does today because it was a Victorian-age chamber with lots of frills and stuff that you just can't reproduce today, and that it wouldn't be practical to reproduce today. But it's a compromise. I think we can say that we went back towards the heritage integrity but not all the way, so to speak.

**Ms Di Cocco:** Your finances, as you said, the ongoing sustaining of maintenance and restoration of the building: Is there a long-term plan in place that is going to go above and beyond, let's say, the next three or four years?

**Mr DesRosiers:** There is. In this year's estimates, which have been approved by the board, the sergeant has put in \$700,000 a year just for that express reason. The board wanted to ensure that this was not an automatic \$700,000 that would pop up every year. This is a line in the budget, up to \$700,000, that the sergeant will have to justify every year. It might be \$500,000 or \$400,000 a year, but this is to ensure that in 50 years' time, we don't have to undertake the same kind of refit that we're going through right now, so we can ensure that we're spending money on the building so that it keeps up with the times.

**Mr Ouellette:** I'm glad the question came out about the long term, because that's important as well.

A couple of other things: I think some areas need to be looked at. I'm just making comments here and I hope you can pass them on. First of all, the elevators I think are disgusting. We get on elevators, we read "4" and it's actually floor "2." We need a retrofit there. We need a maintenance contract and upgrades.

As well, the heating system needs some major upgrades. You can't get the air-conditioning or anything working in any fashion.

*Interjection.*

**Mr Ouellette:** Yes, the heating's working fine today, and we don't need it.

As well, it's my opinion—and I've stated it before and I'm happy to have the opportunity to get it on the record—the dining room should actually be on the fifth floor and utilize the west elevators to have direct express, in the same fashion as they do at the ROM. As opposed to redoing two separate areas, do the renovations so that

the dining room is on the fifth floor, in the same fashion that they have in Quebec. For those who have been to the Quebec Legislature, the grand dining room is rather spectacular to see. People are proud to show their constituents a place like that. I think something along those lines would be beneficial.

I appreciate the opportunity to mention these things.

The other area is the one you mentioned about bringing in the Scottish stone builders. Have we checked with other jurisdictions in the same fashion to find out how they took care of the upgrades in their buildings?

**Mr DesRosiers:** I'm going to let Dennis Clark explain the heating and cooling. It's in our plans. The elevators, I have full sympathy with you. I try to stay away from them myself. It's in our plans as well. I think it's a question of just replacing them. These things have been fixed and refixed to a point that it's a very frustrating problem.

The dining room is something that's totally—everything is possible here. We're certainly in full agreement with the principle here, which is, privatize. That's working very well with Marriott, and that's good. Our concern, though, is—and this has been discussed—to get a very high-class restaurant, to get someone interested from outside who would put on a very high-class restaurant here and attract people from the city to come and dine here.

The restaurant is for the members, and our concern is, we just don't want to price the thing outside the members, so that the population could come and use the restaurant but the members couldn't. I think that's where we've got to be careful. But that's well under consideration and it's fully a possibility.

Dennis, did you want to go into a bit of the details of the heating and cooling?

**Mr Dennis Clark (Sergeant at Arms):** Sure. Just to get back on the \$700,000 that we spoke about, that is for the exterior only. That's an exterior maintenance program that we have this year for the first time. It's obviously very important because of the \$33 million we spent on the exterior. Yes, we spent that, but obviously the building's not going to stay the way it is. That \$700,000 is for such things as salt on the portraiture and things that are rotting away. And there's the roof. Last year we had a couple of incidents where the slates came down and we put in roof guards. So that \$700,000 is for the exterior.

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Each year we have approximately \$1.2 million in our budget for light, fire and safety for the interior. Quite truthfully, that doesn't go too far, because there's just so much work that has to be done, as the Clerk pointed out.

In terms of the air-handling system, I can't argue with you a bit. It is terrible. It's everything from the heating, the fresh air fans, the air-conditioning, and removal of steam radiators. Again, this is all part of the capital plan. If you get the opportunity to look at the capital plan, we've taken it in phases. The first phase we've broken down into phase 1A and 1B, in bite-sized chunks, where we'll do a portion of the building. Because we go up



horizontally and vertically with systems, we'll start there and be able to continue on.

It's very important—I think the Clerk alluded to it—that we want as little disruption as possible, obviously. You have to realize that there's a small window of opportunity each year for us to get some of the work done. That's why to me it's important that there is approval, that we got on with it and get going with it. It's just like the chamber last year. There were times when we had people working 24 hours a day just to ensure that when the members came back, they didn't have to walk under a scaffold.

**Mr Joseph Spina (Brampton Centre):** I'm not sure how to address you; Mr Clerk, I suppose, formally.

I just wanted to clarify a point that you were mentioning. You indicated that out of the \$100-million estimate, \$33 million was done on the exterior and then you said that \$40 million was for the rest of the building.

**Mr DesRosiers:** No, \$60 million.

**Mr Spina:** Sorry, \$60 million for the rest of the building. The renovations that you did to the chamber and to the wings, removing the carpets, how much was that and is that part of your \$60 million?

**Mr Dennis Clark:** That would be pulled from the \$60 million. Everything we do each year would bring that cost down. It's less than \$1 million each year, so when you have—you're absolutely correct, that part of the work that we did in the chamber, \$600,000, would be pulled from the overall capital planing. It's explained in the capital plan.

**Mr Spina:** I don't mean to get this detailed, because it's not a challenge, by any means, I was just curious as to how you replace the spongy, powdery pinewood underneath a well-maintained hardwood?

**Mr Dennis Clark:** You don't. That's one of the reasons, as the Clerk said, it's very important that we have the proper fibre compression in terms of spring loads.

**Mr Spina:** So there's no plan to lift it and replace it.

**Mr Dennis Clark:** No. It's there.

**Mr Spina:** OK, thanks.

**Mr Jean-Marc Lalonde (Glengarry-Prescott-Russell):** I have quite a few points, because I've been calling around first.

First of all, the change that we've brought in the building itself is beautiful, but ever since we changed the curtains in the House, the sound is not as it used to be. Most of the time we have to use our earphones just to hear even the person in front of us who is speaking in the House. So that is a point. I don't know if we have to look at our sound system. There's something definitely wrong there, because I notice more and more people are using earphones in there, and they told me it was because we have brought some changes in the finishing of the inside.

My second point was, yes, the new curtains are beautiful, but yesterday again it was brought to my attention, when people are taking a picture, especially from outside, the drapes that we have at the front window facing University—it looks like a poor area when they're

just putting sheets in the window. I don't know if anybody ever brought that to your attention. Until they brought it to my attention, I hadn't noticed it.

**Mr Brad Clark (Stoney Creek):** Are you suggesting an Ontario flag in the window?

**Mr Lalonde:** Yes. In this case, we don't have the flag.

I was wondering also, what have we done to the beautiful chandelier that we had on top of the stairs? Was there not a chandelier there before? There's something changed upstairs, because when we were taking pictures, I could see a chandelier. There was no chandelier?

**Mr DesRosiers:** Whatever chandelier was there is still there.

**Mr Lalonde:** Sorry.

**Mr DesRosiers:** Monsieur Lalonde, there are things that disappear in this building and unfortunately sometimes we can't recuperate them. As you know, the work we've been doing in the chamber—mainly that Dennis has been doing, trying to get at the painting that's been covered. There's a painting on the ceiling above the staircase. Underneath the paint is a painting of a dark-blue sky. Unfortunately, during Speaker Stokes's time, the curator decided that it wasn't a very nice painting and while Speaker Stokes was up north for a weekend, they did half the ceiling. When he came back on Monday, he looked up and saw this and he was very, very angry. But then, what are you going to do? It's like a glass of water half full or half empty. It was decided that they might as well finish the job and paint the whole thing, so it's gone. That was irrecoverable. It will never come back. But the chandeliers are still there.

**Mr Lalonde:** I have more questions, Chair. Lately it's been noted that the stairwells from the fourth to the second floor have been very dirty. We've seen mud there for three weeks in a row without it being removed, lots of mud.

**Mr Dennis Clark:** What's that area again?

**Mr Lalonde:** From the fourth to the second floor. Most of the members are on the fourth floor and we go down the stairs right next to the lobby. It's not well kept at all. I was looking at it yesterday and it's better. They must have done it lately, but it took at least three to four weeks to have it done. Nobody was removing the mud. I know they're in a rush all the time.

Mr Peters has sent a letter and I have it on my list. On the fourth floor, for those who have their office there, we have one single bathroom. If that one is occupied, we have to run down two floors. There isn't any on the third or the fourth, except that single one at the end of the hallway.

**Mr Dennis Clark:** One of our projects this year will be the fourth-floor washroom, to separate it.

**Mr Lalonde:** You've done that on the second floor. They're dual.

**Mr Dennis Clark:** The next one is going to be the one on the fourth floor, and we want to separate them. That will be done this year.

**Mr Lalonde:** They brought to my attention there was not enough lighting outside the building.



**Mr Dennis Clark:** We're looking after that also. We've got the consultant's report, and I believe it's up for tender. The security systems manager is working on that. It will be met.

**Mr Lalonde:** Another complaint was that there weren't enough disposal containers for smokers at entrances. I haven't looked at it.

**Mr Spina:** Tell them to go to door number 4 at the back. That's where everybody else goes.

**Mr Lalonde:** Do we ever have fire drills?

**Mr Dennis Clark:** That's a good question, Mr Lalonde. Yes, we do. We haven't had one for quite a while. We've just finished off two fire evacuation plans that are very comprehensive. The problem was getting people on each floor to be fire marshals. We're finishing that off and it will go to the Clerk and the Speaker, at which time we'll set a date for fire drills both here and in the Whitney.

**Mr Lalonde:** If we go with fire drills, do we have a fire marshal on every floor?

**Mr Dennis Clark:** Yes.

**Mr Lalonde:** We do? I've never seen them. I've never seen any sign of it or anything.

**Mr Dennis Clark:** Like I said, we're just completing both the evacuation and fire plans. That was the problem. People move so frequently, it was a problem getting the fire marshals and fire wardens.

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**Mr Lalonde:** Fire wardens, I should call them.

The next one I had was, I was wondering if it was possible, when a petition is turned down at the desk, if we could have a stamp on it that the petition has been refused.

**Ms Deborah Deller:** We do attach a certificate when we refuse a petition explaining why we have refused it.

**Mr Lalonde:** I didn't get that on mine. There was a petition I had to present that I was against. I told the person I would not sign it, and it was turned down, but I didn't get that note with it.

**Ms Deller:** If you didn't, just come down to the table and we'll be happy to give you one.

**Mr Lalonde:** Thank you. The other one is the security. Some of the people who called me back said that we should keep confidential the list of guests who are coming into the building, that security should not give the list to anybody other than the security people. It was brought to my attention, when we had a group in at one time, that other people from other parties were aware that these people were coming in. I don't know if it is always kept confidential.

**Mr Dennis Clark:** I'll check on that, Mr Lalonde, but as far as I'm concerned, security would just keep it with security. I can't see them passing it on to anybody else.

**Mr Brad Clark:** We're pretty observant.

**Mr Lalonde:** The next one is probably a cable responsibility, but we used to have French live debate on television and now we don't. We've been asked that question quite a few times. If you want to watch the French debate, of which we have instant translation at the

time, you have to watch it at 2 o'clock in the morning. TFO does a retransmission at 2 o'clock in the morning. Is this a cable responsibility only?

**Ms Deller:** We're at the mercy of the cable companies with a number of issues. Rogers, for example, cuts off our broadcast at 8 o'clock in the evening, regardless of what is going on in the House, to play a movie. TVO replays question period at the end of their broadcast day, which is often at 2 am, and that's what happens with TFO as well. This is the live broadcast you're talking about in your riding, Mr Lalonde?

**Mr Lalonde:** Yes.

**Ms Deller:** We are aware of that in the Ottawa area.

**Mr Lalonde:** So somebody else has complained about it?

**Ms Deller:** We continue to discuss the issue with the cable companies, with TVO and TFO, and we will continue to.

**Mr Lalonde:** Thank you. I appreciate that.

Going to my colleague Steve Peters's letter, in his first point he refers to a lack of Braille in all the legislative building elevators. Do you think it's possible?

**Mr Dennis Clark:** That's something I will check out, all of these, Mr Lalonde.

**Mr DesRosiers:** What we can do here, monsieur Lalonde, is to make sure that when we go into the capital plan in an area—and it will be addressed in areas, so obviously the elevators will be a major part of that. As the sergeant explained, it's usually up and down; not only the elevators but the whole projects are vertical. Braille in the elevators is something that would be looked at if we get a new elevator or a change in the elevator. If it's decided that an elevator we have is going to stay, then I think at that time there would be ample money to address that problem.

**Mr Lalonde:** It shouldn't be that expensive.

Another point Mr Peters mentioned in his letter is improved wheelchair access to the Speaker's gallery west, and that a platform for wheelchairs should be provided.

**Mr Dennis Clark:** We did that about a week ago.

**Mr Lalonde:** Good, he'll be happy to hear that.

He also mentioned that it's important that improved signage be provided for disabled access locations.

**Mr Dennis Clark:** We can look after that, obviously.

**Mr Lalonde:** And again, he mentions the washroom. I don't think item number three of the letter—

**Mr DesRosiers:** These are things he'd have to address with these individual offices.

**Mr Lalonde:** That's why I'm not discussing them at the present time. I want to discuss it with Mr Peters.

The last item—and I presume it is under contract—is that our offices are definitely not as clean as they used to be. Definitely. To me, they never dust the place. We have to get our own people to do it.

**Mr DesRosiers:** I have the same problem. I make the same complaints. We are addressing the problem. It's not an easy problem. We have a lot less staff than we used to



have doing that, but we are constantly going after them and trying to get better quality control and so on.

**Mr Lalonde:** Last Thursday I spoke to them. I thought it was because we were working late at night, until 11 o'clock in the evening, and they would not come in while we were there. I told them they could come in any time now, but they just empty our baskets.

**Mr DesRosiers:** That's not the problem.

**Mr Lalonde:** No, that's not the problem. It's dusting the place. It's getting dirtier and dirtier. It's not nice. No one is watering our plants any more; we have to do it ourselves.

**Mr DesRosiers:** Yes, that's true.

**Mr Lalonde:** Thank you, Mr Chair. That's what I have.

**The Chair:** Thank you. Ms Di Cocco.

**Mr DesRosiers:** Mr Chair, Mr Lalonde raised the point about sound in the chamber. I think that's very important. Maybe Deborah would—

**Ms Deller:** I should probably address that. When we did the chamber refit, one of our concerns too, because we took away the heavy drapery, was whether or not there would be any impact on sound. We had someone we hired to come in do some sound monitoring and check the levels. The indication was that there was no change to the sound. Having said that, we have also heard the complaints from a variety of members saying that in their view, since we've done the refit, the sound has changed, that it's maybe more echoey and that it's more difficult to hear in some cases.

When the House rises at the end of June, they're going to do a sound check again and perhaps take some steps to try to improve it.

**Mr Lalonde:** I know the answer to that one. If you take the sound reading when the room is empty, no problem. It's like on Thursday morning, when there is private bills debate. There aren't too many people there, and I have no problem. But during question period, if there's a lot of heckling, we can hardly hear, like I said, our colleagues right in front of us. So if it's coming from the other side, it's—

**Ms Deller:** We'll do it again when the House rises, and I'll make a note of that comment, and we'll discuss that with the sound technicians as well.

**Mr Lalonde:** I have previous experience in that domain. It's good to take the reading when there's no one there, but take the reading when the House is full.

**Ms Deller:** Maybe in July we'll fill it with staff and have them yell and we'll see what happens then.

**Ms Di Cocco:** With regard to sound, I had an opportunity to actually go through the whole building and to get a sense of the architecture of it and so on. One of the things I understood with regard to the acoustics is the fact of what was taken off the ceiling, the horsehair and the plaster that had been placed there over the murals because of sound. The acoustics in there have changed, as I understand, probably because of that as well.

**Ms Deller:** At the same time, the sound equipment we use is that much more refined now, so that doesn't make as much of a difference as it would have before.

**The Chair:** Mr Spina?

**Mr Spina:** Ms Churley hasn't had a chance.

**The Chair:** She's next on the list.

**Mr Spina:** Let me defer, because I'm new to this committee.

**The Chair:** All right.

**Ms Marilyn Churley (Broadview-Greenwood):** I just have a few things. There were a lot of good questions asked, and real answers. I don't like the artwork around here. Everywhere you look you see men. Everywhere—these great big portraits of men. I know it's hard to find women of prominence, because there was a time when there weren't women of prominence involved, but it would be nice to try to scatter a few women in there from time to time.

**Mr DesRosiers:** The answer to that one is that we have no control over the artwork. First of all, the artwork that you're directly referring to is dictated by tradition. There are three types of portraits here.

**Ms Churley:** Let's think outside the box.

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**Mr DesRosiers:** But there are three types of portraits that have to go on the walls; two types, actually: the Premiers and the House speakers. There's a third: In the building here someplace you have lieutenant governors, but they're mainly in the Lieutenant Governor's suite. You have more women there. Well, not that much more. But anyway, we have no control over that.

We don't own the other artwork. Those are mainly landscapes that were donated a long time ago by the Reid family. There are a few nice ones of women there. What I'm saying is that we have no art and we have no money for art. I'd like to help, but I can't.

**Ms Churley:** OK. I just wanted to put that on the record.

**Mr Spina:** Get some donations.

**Ms Churley:** Yes, maybe I'll think about that—in my spare time. On the issue of Steve Peters's letter, in terms of disabled access, I think Queen's Park should be made a model. We're the people's place. I think we need to have a discussion about allocation of budget when we're doing any kind of renovations, looking carefully maybe with a person with disability who can go through the building and look at all the spots where there are problems. I realize there has to be a commitment from the members to spend that kind of money, but wouldn't it be a good thing if we made this building—old as it is, and I know there are problems—as absolutely accessible in every way possible? It would be a shining example to others in the private sector and to everybody, and we could show that we're doing it here. I know we've been doing it piecemeal over the years, but there's still a lot to be done. It's just a suggestion. I know nobody would disagree. I also understand that it's something we have to make a joint commitment to, a collective commitment to do that.



**Mr DesRosiers:** I think that commitment is there, Ms Churley. The point is that we've made the changes, but we're making the changes as we change the building. That's the common sense way to do it. It's the more durable way to do it. But that is very high on our priority list as we go about the changes. But it's a difficult building. It's not an easy building. If it were, all these changes would be done already. There was a comment here about the galleries. It's nearly impossible to get more people than we do in the gallery, and I don't think we'll ever be able to do much more than we have. Where we can, we're doing it. It is very much a commitment of ours. We really, truly believe in that. I think you'll see it as we go about the work, you'll see—"Oh, my gosh, I hadn't thought." But it's in our plans.

**Ms Churley:** Is there a way to look at those plans?

**Mr DesRosiers:** Absolutely.

**Ms Churley:** I wouldn't mind having a look to see what the suggested changes are and to see if there are any more that can be—

**Mr DesRosiers:** Before you came, I mentioned at the beginning that we now have a committee. We had asked a while back for a representative of every party to sit on a committee with us to go about these changes and so on, once we get the money. Ms Di Cocco has been appointed from the Liberals, and now yesterday Mrs Elliott.

**Ms Churley:** And you haven't heard back from us, I take it.

**Mr DesRosiers:** No, we haven't.

**Ms Churley:** We're still drawing straws on this one.

**Mr DesRosiers:** I understand your predicament. We will be keeping you informed, even if you don't have a person there. It's easy for us to inform you as to where we're going.

**Ms Churley:** I wanted to bring up the cleaning staff as well. I think we've all noticed a deterioration since it was privatized. I've talked to some of the cleaning staff—and correct me if I'm wrong—

**Mr DesRosiers:** It hasn't been privatized.

**Ms Churley:** Well, maybe we can find out what happened, because when I've talked to some of the cleaning staff in the north wing, I know they're run off their feet. They've got an awful lot to do in a set amount of time. I'm just wondering, if it's my misconception, then, that it was privatized, what changed. I certainly don't want to go after the individual people who are cleaning our offices, because I've watched them try to keep up with things. What has changed in the process, and what can we do about it?

**Mr DesRosiers:** It's a downsizing situation more than anything. Also, these are our people now.

**Ms Churley:** Can I interrupt for a second?

**Mr DesRosiers:** The situation before was that this was a service we used to get from the government. The same cleaning people who used to clean the complex across the way, some of them would come over here to do our work.

**Ms Churley:** That's why I'm confused.

**Mr DesRosiers:** That has been changed. The people who now do the work here are technically people who work for us. It's not because there's less complement, per se, but in total the pool of people is smaller than it used to be, and that's part of the problem, but it's not all of the problem.

**Ms Churley:** So the same people clean not just the legislative building but the other government buildings?

**Mr DesRosiers:** No, the people who clean the legislative building clean only the legislative building. That's my understanding.

**Ms Churley:** Then the other government buildings, like the Whitney Block and all those, are totally separate.

**Mr DesRosiers:** That's separate.

**Mr Dennis Clark:** On that, because they fall under me, I'll certainly look at it right away. Perhaps there's something we can do, maybe look at the shifts or something like that or the way we go about it, and make sure the dusting gets done. I know they are very busy, but maybe there is something we can do. Obviously if the job is not getting done, then there is a problem. I'll certainly look at that and get back to you.

**Mr Spina:** Thanks, Marilyn. You asked the question I was going to ask. I just wanted to clarify that the contracts for the other blocks are, I gather, contracted by the maintenance people or the property people who look after those buildings. It's got nothing to do with the Legislative Assembly.

**Mr Dennis Clark:** That's right. It's ORC.

**Mr Spina:** I have one other little suggestion, only because I park there. I'm by door number 4 at the back, and in that little alcove there is a group of cars that park up against the building. I know in the winter we always have the ice warning signs. This winter certainly was a lighter winter, but you did something that obviously made it a lot safer. I wonder if you could clarify that. I would make a suggestion that the parking bollards, the concrete things, be set out, away from the building for the ones that are up against the building. Right now they're set usually just a couple of feet from the building, but I'm suggesting you set them out maybe six or eight feet. That way, if somebody puts their tires up to it, there's still plenty of clearance from the vehicle to the building. I know personally I have hit the stone with the back end of my car, not realizing how close I was. You don't need cars running into the stone.

**The Chair:** Mr Spina, this is in Hansard, your driving ability, you know.

**Mr Spina:** I don't get away with much, because I've got the space right where everybody has a smoke. I have to compliment you, by the way, on how they finished that little alcove at door number 4. That was well done, and needed. There is still a leak for some reason in a couple of spots there. I'm sure security would be happy to tell you.

**Mr Dennis Clark:** Yes, smokers.

**Mr Spina:** When we talked about the long-term plans about shifting some of the elements around the building, are you moving the press gallery?



**Mr Dennis Clark:** That's just an option. There's nothing I know that's in a plan saying the press gallery is going to move anywhere else. As we go into the plan and it's approved, it will be brought forward to the committee, and it's up to them who moves where.

**Mr Spina:** One of the reasons I say that is that we've got members who are shoved off into the bowels and ceilings of the north wing and up on the fourth floor. The Liberal Party leader certainly has access that's far easier. To me it would make more sense that the members had the opportunity to occupy those offices along the third floor and move the press gallery somewhere. There's no reason for the press gallery to have any profile to the public; they've got their own vehicles. If you've got back corners that are really untravelled by the public—

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**Ms Churley:** This is in Hansard, and the press is going to see it.

**Mr Spina:** That's fine. I don't care. The reality is that they are not something that is to be viewed by the public touring this building. Even though I'm not in this building, there are members of the chamber, of the Legislature, who should have better access to the chamber and to the main part of the building. I think that's a better utilization of that space. That's my suggestion. I'll pass that along to my representative member on your committee, and that's all I have to say.

**Mr Ouellette:** Just in closing, I'll ask all the questions I have now. The design of the grounds out front for protests—I think protests are very necessary. I believe the public needs the ability to do that in the same fashion that we as members need to continue on. In Ottawa, the design of the protests are such that the steps are kind of the dividing line in the front. What they have there are walls, and power is available for them out there. There are all sorts of events, and that allows the driving and everything else to continue on a regular basis. A restructuring of the front in the same fashion that they have in Ottawa would allow full public protests to continue on at any time of day and the full operation of the building to continue at the same time. To look at the method they utilize there would be very beneficial so we could proceed with both here at Queen's Park.

The other thing I'd like to say is, has anybody ever put any money in your pouch, and if so, who, and who sharpens your sword?

**Mr Brad Clark:** Now I don't have any questions to ask.

**Mr Dennis Clark:** On the demonstrations, it might be an idea to check with your representative on the security committee, who is—

**Ms Deller:** Mr Mazzilli.

**Mr Dennis Clark:** We meet as and when required. If you have some suggestions, I think that would be one vehicle to use, to suggest it to him. He would bring it to the committee, because it's all-party. That's what we always obviously look for. I appreciate the suggestions.

**Mr Lalonde:** A similar point: George Smitherman called me just before I came. I was going to forget, and

then he took me down to the dining room and to the large picture of the building in the dining room that has the beauty of the building. The fact that we have cars parked in front of the building eliminates—

**Mr Spina:** Or the buses.

**Mr Lalonde:** Buses are a little different. They don't stay there all day. They come in and they leave. In Quebec City, for example, and in Ottawa there's no parking in front of the buildings. I don't know about the other Legislative Assembly buildings. In the long-term plan, if we could look at the possibility of moving that parking from the front—

**Mr Dennis Clark:** It's in there, Mr Lalonde. It's an excellent suggestion. We want to bring it back to its original state, shorten the driveway and make the big buses pull up front and just stop. There is a proposal in the capital plan to make bus lanes right at the end here.

**Mr Lalonde:** Good.

**Ms Churley:** I have one question. Are we still pesticide-free?

**Mr Dennis Clark:** No.

**Ms Churley:** We're not? I thought we were going in that direction.

**Mr Dennis Clark:** We do something. My understanding is—

**Ms Churley:** You will remember this, Deb. A couple of years ago I made—I don't know if it was a motion. I guess it was Speaker Stockwell who dealt with it then and I believe—we can check Hansard—he said that we were going to become pesticide-free. We don't know for sure.

**Ms Deller:** I guess Dennis will have to look into it. My understanding is—and this may have changed—that our contract with Clintar, who does the grounds, is that they don't use them.

**Ms Churley:** Can we check if that's still the case?

**Mr Dennis Clark:** I'll check on it right away. I thought they used something that's non-toxic.

**Ms Deller:** Yes, non-toxic.

**Ms Churley:** That was the idea. There are all kinds of alternatives out there.

**Mr Dennis Clark:** It's my understanding that's what they're using.

**Ms Churley:** If you could just double-check and make sure of that.

**Ms Di Cocco:** Just one quick question. It has to do with the ongoing maintenance of the building. You said there's \$700,000 for the outside. What about ongoing restoration? Once the building is restored and you're finished, in 10 years—I don't know what the long-term plan is, but I presume it's not going to be done in two years. Are there ongoing funds to maintain the inside of the building and the ongoing restorations? Old buildings like this require a different kind of upkeep, maybe, than a more modern building would require.

**Mr Dennis Clark:** That's an excellent question. We have funds for O and M—operation and maintenance—services for the inside of the building. This year it's



\$700,000. We also have, through ORC, a number of MOUs for trade services looking after minor renovations.

**The Chair:** I think we'll move on to your report, Mr Clark, but before you do, the Chairman gets to ask a question, I hope.

What kind of insurance is on this building, if it were to burn down tomorrow?

**Mr Dennis Clark:** We're not insured.

**The Chair:** You're not insured?

**Ms Deller:** No one will insure us.

**The Chair:** The other thing is, are you designated as a historic building, or do you just work to try to maintain it as historically as you can? The reason I ask that is because it's my understanding that if a building is designated as historic, it has to be repaired as it was when it was built. This is owned by the legislative precinct, but on the other hand I wonder how you can do certain things without having to do them as they were 100 years ago.

**Mr Dennis Clark:** To answer your first question, we are designated as a heritage building. We have a heritage adviser, who works for Ontario. Every time we go to do something, we go through that heritage adviser to be sure we conform with the heritage rules. Just as a matter of interest, the director of building management, Mr Paul Tranquada, teaches heritage restoration at Ryerson. So he's probably one of the better-qualified persons in all of Ontario when you're looking at that.

**The Chair:** When I talked about insurance—this building has never had any insurance on it?

**Ms Deller:** I can't say "never."

**The Chair:** Is it customary for legislative buildings not to have insurance on them?

**Ms Deller:** I can't speak to other legislative buildings.

**The Chair:** Maybe it's too expensive; I don't know. I'm just surprised that there wouldn't be some on it.

**Mr Dennis Clark:** I know when I worked for the federal government, all our RCMP detachments were never insured, just like police cars. I think it's the cost involved.

**The Chair:** OK, I was just wondering.

Mr Clark, do you want to chat about anything regarding the Sergeant at Arms's duties?

**Mr Dennis Clark:** Unless there's any other questioning, I think you've covered just about everything. I'll just briefly say that we've now been approximately three years with our own security service here. We have a complement of 55 and a plainclothes intelligence unit of two. I'm extremely proud of them. They're very well trained. We have a lot of initiatives going on in terms of security systems. We've had a lot of upgrades in terms of duress. We're going to wireless duress with more CCTV cameras. We're going to proximity cards for access. I would offer an invitation—I know you're all extremely busy, but if you could ever pop down to our operational control centre, it will give you an idea of some of the systems we have and just how secure I feel you are in this building.

1640

**Mr Brad Clark:** If I may, during a couple of hearings we've had in the committee rooms—I've talked to other members about it, and some concerns were raised about the security in committee hearings. In the House it's a little bit different. They have to go into the gallery; they have to go through a process to get into the gallery. However, I've noticed that there were some interesting situations happening in committee hearings, and we're sitting very close to the public. How is the security handled for committee hearings?

**Mr Dennis Clark:** That's an excellent question again. A couple of things: For security in committees here within the legislative precinct we will, when we know there are a lot of people, have extra security officers outside, but we will not go in unless the Chair or the clerk, I believe, says there is a problem. At that time we will come in and do what we have to do, if we have to remove somebody.

As another initiative, for travelling committees—we just started yesterday; the first one was in Barrie—we are sending security officers with travelling committees where they request it. Although it's a local police responsibility, if we have a security officer there, they have a better feel for what the committee is all about because it is part of the chamber. So we've also taken that initiative. But as far as the ones here, we will not come in until we are directed to do so.

**Mr Brad Clark:** How do you get directed to do so? Does the Chairman yell, "Help"?

**Mr Dennis Clark:** Basically, yes.

**Mr Spina:** On that same point, I've sat through committee hearings over the past five years, and to me this room is a prime example, not to mention the other rooms. I don't have a problem with people who are sitting in the chairs. Where I had a problem was when the room was permitted to be filled, so we had people standing along the walls on both sides. I'm sorry, but I don't buy that. I have a problem with that, not only from a discomfort point of view, but the other side of it is, is there a fire regulation that's being contravened—even though the building probably contravenes half of them in the province to begin with, purely by its very nature? Nevertheless, that's a concern to me. To me, if there are 50 seats here, then the capacity of the room is limited to 50, period, end of story. Priority should be given to delegates who are coming to make presentations to the committee. That's the number one priority. Anyone else, if we have seats left over, then fine, they're welcome to come in. But I as a member of a committee would appreciate that the public be limited to the number of seats that are in the room.

**Ms Deller:** The committees branch falls under my area of responsibility, and I'm interested in what you're saying, Mr Spina. You're absolutely correct. That should not be happening. Whatever guests are here, with respect to committees, should be behind this witness table, and they certainly shouldn't be up against the walls and behind the members. There are instances when press may



be there. Again, though, the Chair would have to authorize that. I will certainly look into it and check with committees branch and find out if that's happening. If it is, we'll take steps to correct it.

**Mr Spina:** Recently, I'm not sure it has been as much of a problem as it was, for example, when we went through the WCB bill hearings, and certainly through some of the education hearings.

I wonder, are the committee Chairs trained in terms of what authority they have or do not have? You just said something to me that was totally new, and that was that the committee Chair had to authorize the press to go beyond that press table. Is that right?

**Ms Deller:** The committee Chairs have chairs' meetings from time to time, and each committee clerk advises the Chair on—I can't say for certain whether each committee Chair is specifically given all those particular rules at the time. Usually they're advised ad hoc, as things occur.

**Mr Spina:** I have one final suggestion. As part of the ongoing renovations, perhaps, because some of the room will become essentially permanent committee rooms—they are now sort of; they're also double duty for other things. If they become more dedicated as committee rooms, you might consider a classic wooden rail like a court.

**Ms Deller:** One of the advantages we would have to the fifth floor idea for committee rooms is that we'd be able to set up the layout of those rooms such that we could improve the security access and egress for members as well as put in those rooms all the kinds of facilities that committees typically need. These rooms on the second floor were never set up to be committee rooms.

**The Chair:** Just one comment, if I may, on what Mr Spina was saying about people standing behind. When I hear that you started yesterday to have one of your officers going to the committee hearings—

**Mr Dennis Clark:** On request.

**The Chair:** On request. When we're on the road, it seems to occur more often because these hotels where you go—they're set up there, and they get an overflow crowd. For many of the ones I was on, certainly in the earlier days, that's where they were standing behind. If you have one of your staff there, I think it's something they should be aware of, if they are requested to be there, that that does not happen.

**Mr Brad Clark:** I guess I need clarification—earlier I was joking about it. I was sitting in here when we had hearings on Brian's Law. We had a situation where an individual became very agitated in the back and started yelling. Actually, it was at MPP Patten, and it was extremely unnerving. The Chair was trying to settle him down and raising his voice. It was very tense for two or three minutes. No security was around. I don't know how the Chair can say, "Security, get in here." Maybe I'm missing something here. I was joking, "Does the Chairman yell, 'Help!'?" I don't know.

**The Chair:** A lot of times they'll get a quick adjournment and then try to settle it down.

**Mr Brad Clark:** I understand that. But in the situation we had, we had someone who was very agitated in the back. He was in and amongst witnesses, people who just came to the hearing. He was getting agitated. He could have become violent. We don't know. He was very upset. To state, "We're going to adjourn," and have to walk past that man who's agitated, I think there's something that's not quite right in the system.

**Mr Dennis Clark:** I guess it would be up to the officer to decide whether she wants security right in the committee room.

**Ms Deller:** That would be the call of the committee Chair to make. The committee Chair could decide to have a security officer inside the room. The discretion the Chair has to consider is whether having a uniformed security officer in the room is going to be more inciteful than not.

**Mr Brad Clark:** I'm not suggesting that.

**Ms Deller:** The other thing is that the layout of these rooms for committee purposes is not the best. There's no point of egress for the members without going through the audience. In certain circumstances when I was a committee clerk, sometimes the Chair would dispatch the committee clerk out to make sure they got security.

The other thing you should know is, each of the committee clerks has access to wireless, portable duress buttons. When there are hearings that are potentially difficult, the clerk will have that duress button in front of him or her. It sounds an alarm in the operations centre and they dispatch security. If there is something that is real trouble, there is an alarm that can be set off.

**Mr Brad Clark:** Is that alarm at every committee hearing?

**Ms Deller:** Donna, you'll have to help me out here. I'm not sure.

**Clerk of the Committee (Donna Bryce):** It's not actually attached to the desk or anything. It's something a clerk can carry in their pocket. It is portable. The good thing about that is if the clerk happens to be standing at the back of the room, as opposed to in the seat here, and there's some sort of trouble, that panic button can be hit from anywhere. If it's attached to the desk here and the clerk is at the back of the room, that doesn't help either.

Other measures we've taken when we've had issues like the WCB issue, for one, we actually had a phone installed right here at the front of the room where the Chair and the clerk sit. All you had to do was pick it up and it went directly to security. We have an intercom phone right here that we can use. It doesn't go directly to security, but we can certainly phone another staff member. Given the room and everything, there is a certain amount of planning that we have to take.

1650

**Mr Brad Clark:** When the situation happened on Bill 68, the Chair was trying to deal with the gentleman in question, and he did—purely through intimidation, I think—get the gentleman to take his seat again. Do you



know if any notification went out? I mean, would the clerk or anyone else have said to security, "We may have a problem here"? You can see what I'm saying: It's going to start escalating, and if he doesn't get it under control, by the time we get the alarm issued that we may need security, it's already at the point where we needed security.

**Ms Deller:** It's important to remember, from our point of view, that this is a decision that is made by the Chair. Just as the Speaker makes decisions around security and access to the galleries in the House, it is the Chair who has to be in charge of decisions around security with committees. The clerk will then wait for the direction of the Chair. That's not to say the clerk might not prompt the Chair, but the clerk will wait for that direction.

**Mr Brad Clark:** This is the last question, Chair. A number of members had brought to my attention that the panic buttons in their offices are not working.

**Mr Dennis Clark:** That's why we're replacing them all. They're the hard-wired ones. We have to replace them all with wireless duress alarms.

**Mr Brad Clark:** With the wireless one, if the member sets it off, how do you know where he is?

**Mr Dennis Clark:** It comes up on our screen in our operations centre. So it'll show up right on the screen exactly where that—

**Mr Brad Clark:** Where the individual is?

**Mr Spina:** It's also a GPS alarm?

**Mr Brad Clark:** It shows where the individual is who set off the panic button?

**Mr Dennis Clark:** Yes.

**The Chair:** On your concern regarding Brian's Law, we just got clarification that there was security outside the door.

**Mr Brad Clark:** I didn't know that.

**The Chair:** So somebody does watch us doing this stuff.

**Mr Dennis Clark:** I just want to tell you—you talked about asking for security, how long they were going to take to get here. If the clerk or the Chair knows it could be a contentious committee, the security would be right outside the door—usually more than one.

**Mr Brad Clark:** Yes, I was just raising the point.

**Mr Lalonde:** I was going to say, why don't we have a panic button? Probably every person chairing a committee should have this wireless panic button. If you go to the phone, if you have to phone to call someone, the people in the room will notice it. It's better to use the panic button like we have in our riding offices.

**Ms Di Cocco:** First of all, I want to say I've actually had some really good experiences with the security people. They've been very helpful on a lot of occasions over numerous things. I want to say they're just excellent people. So far I've had some great—

**Mr Dennis Clark:** Thank you very much.

**Ms Di Cocco:** I would like to ask how many times actually have there been committee meetings where there have been situations? Sometimes we discuss possibilities of what may or may not happen, but I also like to look at

history. Is it very often that there are any real problems that happen with regard to people being either violent or out of control? I know in the House we do that every day, but I'm saying here in the committee rooms.

**Ms Deller:** The short answer is no, it doesn't happen very frequently. Most of the problems are people who have become unruly. They start to yell. They stand at the back of the room, they get agitated and it looks like there may be a problem. I can think of only two instances where we've had what I would consider to be a serious problem, where security actually had to take more action than just removing the person from the room and the building.

**Ms Di Cocco:** I say that only in the context that I believe this whole aspect of being accessible and public hearings being just that: public hearings. I understand being prudent and having people in place, but we can get a bit carried away in that regard. If there haven't been a lot of incidents, then maybe the precautions are there and the people are in place. I'm quite satisfied with the answer.

**Ms Deller:** I think that's why we treat each committee hearing on its own merits, and that's also why the Chair has to be able to use discretion to deal with each instance.

#### ANNUAL REVIEW:

##### BROADCAST AND RECORDING SERVICE

**The Chair:** Ms Deller, we'll let you make any comments you'd like.

**Ms Deller:** I'm not going to take a lot of your time, because probably most of you are familiar with broadcast and recording. My division is legislative services, and one of the branches in that division is broadcast and recording services. It's managed by Bill Somerville. That is the organization that provides bilingual, gavel-to-gavel live coverage of the proceedings in the House, as well as certain committee proceedings, those that occur in room 151, notably, as well as some on-the-road committees.

The distribution is via satellite to cable, so Rogers, Shaw. The satellite is owned by Telsat. The distribution of that satellite signal is done through Cancom. They are the ones that provide us with the signal. The signal goes out to the cable companies. It also goes out to one satellite distribution company, Star Choice. So if you're going to go the route of satellite for TV coverage, Star Choice is the one you should probably get. It goes to the caucus communications departments. It also goes to commercial broadcasters in Queen's Park and various news organizations throughout the province.

We also have a multi-channel network. You've probably had something to do with that, where you watch the press coverage from the day before. You can also call up broadcast and recording and have them replay whatever segment of yesterday's proceedings or last week's proceedings you want them to.

It's also responsible, obviously, for all the maintenance of all the video and audio broadcast equipment and any dubbing console operation services. The guy



who sits up in the corner of the Speaker's gallery turning all your microphones on, that's broadcast and recording. One thing to note is that it's the microphones that in fact control those cameras in the chamber, so when the console operator puts your microphone on, that shifts the camera around so that it's looking at the person who is speaking.

The guidelines that govern how the proceedings are televised—that is, who's on camera during what proceeding during the day—are guidelines that were approved by the House in 1986. You all have a copy of them in your grey binder, which includes your standing orders and the Legislative Assembly Act. Those have not changed since 1986.

One thing I wanted to mention, because it's a question that has come up, is live video streaming on computers. We currently provide live video streaming to Hansard. It makes the job of doing the digital transcription of Hansard a whole lot easier if they can have a picture, in the corner, of the House proceedings. Broadcast and recording, along with legislative information systems, are currently evaluating all the new technologies, network connections and facilities in order to prepare a report for senior managers with respect to live video streaming available on a wider scale.

I think that's just about all I have.

**The Chair:** Questions?

**Mr Spina:** I just want to say one comment. You guys do a terrific job, and we really appreciate what you do. Thank you.

**The Chair:** Any other comments? Is there live TV in all parliaments in Canada?

**Ms Deller:** Not all. Many, but not all.

**The Chair:** Are there other Legislatures that maybe do it differently from what we do as far as the way the cameras operate? A comment has been made to me that the assembly was much more professional prior to cameras coming in, when all of us—notice I said “us”—could stand up and get on stage. Are there any suggestions of what others are doing that tend to maybe have a little bit more control over it?

1700

**Ms Deller:** It's been a while since—

**The Chair:** I'm putting you on the spot. I don't mean to do that.

**Ms Deller:** I'm not going to comment on the decorum in the chamber.

**The Chair:** I didn't ask you to do that.

**Ms Deller:** It's been a while since we've done a cross-jurisdictional look at television and guidelines in legislative chambers. Before we installed our own cameras, we did visit those other jurisdictions where televising was occurring to have a look at their system and their technology and their guidelines. It was, in fact, the Legislative Assembly committee that reviewed all of that and came up with these guidelines.

We haven't, since then, done that cross-jurisdictional look because in most cases the other jurisdictions are taking a look at us and adopting our guidelines and

technologies for their own purposes. But at this stage, in the year 2000, it might be worthwhile doing that and having a look.

**The Chair:** About three or four years ago there was some thought that this committee would look at conduct within the House, and we could not get agreement, because I sat on the committee at that time, to do that. So that was a bad start. I know that has to come from the Legislature itself and be directed to us.

I'm wondering if the committee might be interested in seeing what is being done in other jurisdictions regarding television etc. Maybe it's only me but—

**Mr DesRosiers:** I'll make a comment on that. I've been around for quite a while. I was around in Ottawa when they set up the television in 1979 and I was around here when we set up television. Yes, it's true that there have been changes in decorum in the House.

But I wouldn't point the finger at television. What has changed in the House, because of television, is maybe different-colour suits and maybe a bit more careful grooming for certain people. There's this grouping factor. When there's hardly anybody in the chamber, people will go and sit with the person who has the floor in order to make it appear that there are more people in the House and so on.

But the yelling and screaming and so on—no. I'll tell you what I think. This is a totally personal theory that I've developed over the years. I go back to my university years in the 1960s, and between 1965 and 1968 at the University of Ottawa there was a change. In order to get into class in 1965 I had to have a suit, a tie and jacket, or I just didn't get into class. But in 1968 I had to have a few holes in my jeans and a few holes in my sweater in order to fit in. It was a cultural thing.

The people who took over the university and changed society in that way in the 1960s are those who got elected to our chamber in the early 1980s. The reason I came to that conclusion is because it's in the early 1980s that you start having changes in the chamber. It's in the early 1980s that things start happening in our legislatures that really bring about the situation we have today. It starts in the early 1980s. All parties have done this; all parties have been in government and in opposition while these things were happening.

For example, the first item that happened was in 1981, when the Tories rang the bells for two weeks in Ottawa. These things happen. They were in a very tense House. They were debating Trudeau's national energy program, and the Tories were just fit to be tied, not only because of the bill that was in front of the House, but because of the situation in the House. In 1980, Joe Clark had been defeated in the House. He had gone to the people sure that he was going to get a majority—he had a minority—but that didn't happen. Not only did he not get a majority, but the Liberals were elected; and not only were they elected, but they had a majority; and not only that, but Pierre Trudeau was back in town.

The atmosphere was very tense and it led to a whole bunch of stuff. Poor Jeanne Sauvé would get up—15



years before, a Speaker would get up and the place would calm down. The magic wasn't there any more. It's a cultural thing.

My wife and I had a shock in the 1970s when the kids came back from school and they were calling their teachers by their first names. We said, "What is this?" "The teacher wants us to do this." It's a whole reflection and it shows up in our legislatures and it's something we have to live with, I think, until society changes again and we get some quieter times.

**The Chair:** We won't look at the policy there. Any other comments?

I had one other comment for you, Mr Clark. Are you at a full complement of officers?

**Mr Dennis Clark:** Yes, we are.

**The Chair:** Do you feel that's adequate?

**Mr Dennis Clark:** Yes, I do. On that, we have a memorandum of understanding with Toronto Police Service in that when there's a major demonstration—we do the exterior anyway, the patrolling, but we will work in conjunction with them on any special events or anything on the exterior.

**Ms Di Cocco:** I think it would be an intriguing process if there was an attempt to bring to discussion the decorum and behaviour in the House. You mentioned that it was done before, or at least it was attempted.

**The Chair:** It was attempted before, if I remember correctly.

**Ms Di Cocco:** I'm not a new member any more, but being one of the latest to be elected, and not having had experience at all in the Legislature, one of the things I find is that people are surprised at, if you want to call it, the antics, what goes on in the House. If we can ameliorate that and make it somehow better, I'm all for it, because I still cannot get used to that kind of—where everyone is adult. We're supposed to be professionals; we're supposed to be representing our constituents. There is a level of dignity, I would like to think, in this office, and when we go in the House, I don't know what happens to everybody. It's like a hockey arena. All civilized conduct goes out the door.

**Mr Spina:** And some get penalized.

**Ms Di Cocco:** It's an intriguing discussion to be had, and I think it's of the societal context in which you brought it together. But maybe it's time to make small incremental changes or bring it to discussion. I don't

know if it's the focus of this committee or not but, because you raised it, I just thought it's an intriguing discussion to be had.

**The Chair:** Certainly, if we get the House leaders to be in agreement with our looking at it, it might happen. I guess we could talk it up.

**Mr Tony Martin (Sault Ste Marie):** For what it's worth, when I came here 10 years ago there were people within our caucus—we were the government at the time—who said they were going to clean it up; they were going to make sure that decorum was returned. They then, in a year or two, became the worse offenders.

I remember when the present government came in and they were going to clean it up. I remember people being absolutely disgusted. I remember John O'Toole, the first year he was here, would walk out of here, "This is crazy." Well, look at him today. You can point fingers at all kinds of people. You talk about the House leaders. They become the worst offenders at times. Anyway, it seems to be part of the whole dynamic of the place. I guess if you can survive that, then you can survive anything.

Sometimes I think, when you get challenged in the way you do sometimes when you get up to speak, that if you really believe in what you're saying, it won't bother you.

**The Chair:** I stand to be corrected, but the committee can decide that they would like to look at it. It's something maybe that we can bring up at the next meeting.

**Ms Di Cocco:** It may be thinking outside the box or something, but maybe it's time to at least bring it for discussion. It may go nowhere, but I think it's valid because you're trying to make the quality of what happens in the Legislature. You want to raise the quality there.

**The Chair:** Maybe we can all think about it for the next meeting. I agree with you, although I'm not supposed to agree with you. Thank you for bringing it up.

We will refer the letter from Mr Peters to you. Will you advise him? I guess we'll advise him that we've done that, for your consideration on the accessibility plan.

Are there any other questions? If not, I thank you for your attendance and I thank the committee for their attendance. The committee is adjourned.

*The committee adjourned at 1711.*

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## **Legislative Assembly of Ontario**

First Session, 37<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Première session, 37<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

Thursday 15 June 2000

# **Journal des débats (Hansard)**

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1999-2000 Annual Report,  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Thursday 15 June 2000

Jeudi 15 juin 2000

*The committee met at 1533 in committee room 1.*1999-2000 ANNUAL REPORT,  
ONTARIO OMBUDSMAN

Consideration of the 1999-2000 Annual Report of the Ontario Ombudsman.

**The Chair (Mr R. Gary Stewart):** Ladies and gentlemen, we will call the meeting to order, now that we do have a quorum. I believe everybody got a copy of the Ombudsman's report today, albeit some didn't get it too early in the day so probably have not had the opportunity of going through it. That's the reason we have the Ombudsman with us today. I believe this is a precedent. I don't think, certainly in my time up here, that the Ombudsman has come to the committee to discuss his report.

Welcome, Mr Lewis. I appreciate you coming. Please have a seat. We'll turn the floor over to you, sir.

**Mr Clare Lewis:** Thank you, Mr Stewart, and members. I appreciate your agreeing to see me today. I felt that this was a time when I ought to come before the committee. You'll find that I speak in my report today a fair amount about accountability of government.

**The Chair:** Can I get you to introduce your colleague just for the record.

**Mr Lewis:** Of course. Ms Wendy Ray is counsel in the Office of the Ombudsman. I've asked her to sit with me because sometimes I get lost in the report and she can point me to the right page. When you ask me questions, it flusters me, right, Mr Lalonde?

I have made, as I'll discuss with you, some fairly strong comments about accountability as a responsibility of government. I think it's a responsibility of the Ombudsman and I am accountable, and I see you as my accountability partner, if you will, in reporting back to the Legislature.

The report was delivered to the Speaker this morning at I believe 10 o'clock for placing before the Legislature this afternoon. I was before the press at 10:30 for close to an hour and addressed some issues. There is a press release which is being distributed to you which will give you a flavour of the report.

At your leisure, I would invite you to glance through this report. I'm rather pleased with it, frankly. It's of course only reporting on two months of my tenure. I have only been there four months, and it's up to March 31, so my predecessor has the rest of the responsibility and

kudos or whatever. I am particularly interested that you look at my opening, "Ombudsman Message." I speak there of the need for the Ombudsman to build bridges with government, with the Legislature, with the public service and with the public we serve generally, the communities. I talk about my intent to do that and to operate an office which is open and transparent and accountable.

The way in which the report is structured, it has the opening remarks and it then goes into issues such as our budget and data on a client survey which we had done to determine how we're serving the public and what publics are coming to us. We then go on into the complaint statistics, which are set out in some detail. Then we have what we call "Case Stories," and they take almost exactly one half of the volume, 24 pages. Case stories deal with principal issues that I have highlighted, called "Case Story Highlights," and with formal investigations and with informal resolutions of the complaints.

I want to start off by saying that this year we tabulated some 22,720 complaints. Of those, perhaps 14,000 were jurisdictional in the sense that they were provincial as opposed to federal. Staff has spent a lot of time dealing with federal, municipal and private complaints, and so on, and steering people and assisting them as we can. But of the jurisdictional complaints, I wanted to point out to you, in terms of our service delivery, that 75% of the over 13,000 jurisdictional complaints are resolved by our office within 20 days; 50% of those 13,000-plus jurisdictional complaints are disposed of within six days. By "disposed of" I mean resolved. They are withdrawn sometimes. The problems are solved, as you will see in the case stories, through inquiries. Information is given and the person is satisfied with the information provided. But the cases are able to be closed at that point. It's a much smaller number that go forward to a more formal appreciation, and ultimately perhaps to an investigation.

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As you know, I came before you a month or so ago because Ms Jamieson had four reports tabled with this committee from last April and I had to deal with them. That was my priority. I reported to you at that time when I came that in my view I had a positive response on the adoption disclosure registry in terms of the \$2.4 million and the commitment to clear the backlog within 18 months. Further, I was able to settle one of the human rights complaints issues that Ms Jamieson had brought



forward for consideration by this committee by an apology and a payment to the complainant.

The other two were withdrawn, if you'll recall, because they were service delivery complaints of the Human Rights Commission and of the Family Responsibility Office, on the basis that I determined that the information in those investigation reports that were laid before you was no longer current. Since what essentially happens in front of you when the Ombudsman decides to press is a hearing, with me on the one side and the deputy on the other disputing the matter, I didn't feel I could make the cases on the basis of the information that you had been provided. It might have been right; I'm sure it was OK for that time, but not now.

I had been assured as well by both agencies that some significant steps of improvement had been taken. I will say to you I have not yet had time to verify that, and you'll note that the complaints against FRO, for instance, are still high. That's listed in here; they are almost the same as they were. I think we are familiar that there are still ongoing issues. I'm not saying that I'm not interested in the future of FRO and the Human Rights Commission and their backlogs and other difficulties that they're having, particularly FRO, but I'm not in a position to report to you on them at this time.

What I have reported on that seems to be getting a lot of interest from the press, given the calls I've had back since this morning, are the two stories that are set out on pages 24 and 25-27. The first has to do with the Highway 407 collection of tolls. I initiated personally—this is my own—an own-motion investigation in late February, early March into the issue of the 407 difficulties that came to light and the Ministry of Transportation's involvement in the refusal of renewal of licence plates. My concern on the investigation and the reason for doing it was an accountability issue. I want to say to you I closed the investigation within five weeks. It was opened, dealt with and closed, because the ministry responded very quickly to that particular problem. You may recall that some 80,000 people had been denied their renewals and 120,000 more were in the pipe about to be denied their renewals.

**Ms Marilyn Churley (Broadview-Greenwood):** I do recall.

**Mr Lewis:** Yes. The ministry suspended that program of denial until they could ensure that there was a proper arbitration process, and the public was aware of it, to solve those complaints. That was a good response and I commended them for it. I wrote in my report and I bring this before you that—I'll do it from my press release because it's an easier way to do it. I took the position in a letter to the Deputy Minister of Transportation that "it was unfortunate that neither the act," that is the 407 act, "nor the concession and ground lease agreement covering its implementation contained accountability mechanisms for legislative compliance regarding toll collection."

The issue was that the government had reserved to itself the power to act punitively on behalf of the private partner in the collection of its fees. I'm not quarrelling

with that mechanism but my position was, and is, that it raised the matter of having the need to provide for accountability so that those members of the public who are caught in that have access to a dispute resolution procedure. That is what is happening now and why I ended the matter, but it wasn't in the original agreement. My comment, and this may become a theme, was: "The Ombudsman recommended lessons learned in this case be shared with other government agencies: 'This matter highlights the need in privatization initiatives for accountability mechanisms to ensure that the private sector partner acts fairly with the public.'" That was one of my major highlights and issues.

The second one had to do with systemic problems in correctional services. We had over 6,000 complaints last year from inmates of provincial facilities. There were too many complaints for us to investigate on an individual basis, although some of them of course were investigated individually, but the principal thing that occurred was that our office went on an "own motion" system-wide basis to look at the policies, procedures and the standing orders of the ministry and found that they were fine. They had good documentation, good directions to staff. What was not fine was considerable inconsistency in the application of the qualities of the ministry and the standing orders in individual institutions. So the three areas of greatest concern where we felt there was a real lack of consistency and lack of enforcement of policy was in use of force, segregation of inmates and lost property.

We did find some cases in which there was error or improper conduct. For instance, in one, a correctional officer used mace on an inmate although he had not had training in it and the policies require training before the application of that use of force, and in another one there was a hygiene issue of some substance in a segregation cell—and it has been rectified—but really quite severe. But generally speaking what we discovered is we weren't able, and neither was the ministry, to determine whether these complaints had validity or not because the record-keeping was so inadequate.

I'll give you an example. The policies require that if an injury occurs to an inmate, photographs must be taken immediately. It's not as if they weren't necessarily being taken; there was no way of establishing, by the time a photograph got taken, when the Ombudsman showed upon on the scene that you could determine anything. We were very concerned, given the number of institutions and the number of persons in custody, that there needed to be improvement here. I must tell you that the ministry was very co-operative. They responded positively. They've increased training, done some revisions of their policies and their standing orders and they've taken several significant steps, and so we closed the investigation.

But once again, and this is my position on the matter, I see this as an accountability issue. The ministry, which is responsible for the operation at this time of those facilities, was unable to account, by reason of the inconsistent enforcement of policy, for the treatment of persons who were incarcerated and in their charge. I commented



because this is an issue with correctional institutions and as privatization initiatives proceed in this ministry, as we understand they may well, the issue of accountability and the treatment of inmates will remain a matter of concern. What I am saying there essentially—and I'm not speaking to the issue of privatization or not; that's not the issue which I am attending to, but rather that as they do proceed, there is a real need for the government and the ministries to ensure that the private partners are accountable to those ministries. My position, with respect, is that prisoners who government has incarcerated are entitled to the protection of government while they're in custody. By the way, I'm not suggesting there has been any wrongdoing in this at all, because the initiatives haven't gone forward, with one exception, but I'm asking, as I did in the 407, that the accountability issues be kept foremost in mind so that prisoners can be assured and the government can be assured that they will be looked after appropriately—hygiene, use of force and so on. Those were the two lead items in the report and really represent the theme.

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I can say briefly that when I had to read the case stories, 24 pages of them, and decide whether they were going to be included in the report, back in April sometime, as I said this morning, I undertook the chore—I've got a lot of paper here to read; here I go—I found myself being drawn in and I was frankly quite moved by what was occurring in these stories. These were cases of people often in quite serious need where there had often been error, not always, or misunderstanding in the delivery of a government service, and by the intercession of our staff many of these people got redress quite rapidly.

I must say, while I don't bear any responsibility for it because most of it occurred before my time, I was quite proud of it. I really think that is a good thing, and it is an example, first of all, of a core responsibility of the Ombudsman, but also one of the things which in my respectful view, as I said in my interview before this group, is supportive of the operation of democracy, that there is a means for the citizens to have an answer when government has failed to do things quite correctly. When I say "government," I'm speaking about the public service, because that's what I'm looking at. I thought I'd bring those matters to your attention, and I'd be more than happy to take any questions.

I should tell you of an issue that arose this morning that's in the stories and it's important, and it's the first of the non-major stories. It got a considerable amount of press attention and may be reported on tomorrow. It had to do with a radio station application. A company was seeking transfer from an AM to an FM station. In order for the CRTC to permit it, a provincial ministry had to say, yes, they agreed, and did.

Another ministry, one of the members of the Legislature apparently claimed, went to the ministry and said, "Look, on behalf of another radio operator who's objecting, I am saying you should not agree to this." The minister in the second ministry wrote to the CRTC saying

that this licence should not be granted, and it put the whole thing off the rails.

In our investigation of the complaint—and it was a minister who signed the letter of objection to the CRTC—we determined that that letter was signed without the proper evidence being before the minister and caused a harm that ought to be redressed. In time the ministry agreed and they paid \$12,000 to the person for this kerfuffle. Sorry, I guess that's not good for Hansard.

In any event, the press picked up on it on a level that I hadn't appreciated, and I just want you to be aware of it. There was some suggestion that I was perhaps saying there was ministerial impropriety here, and that's not what I was saying at all; it was an error. Then there have been a lot of questions, of course, arising from that as to who is the minister and so on. I'm afraid I have confidentiality issues. I can't report on anything to third parties, according to the regulations, that isn't reported to the Legislature, and in our practice we don't name those people. I haven't named that person, but there will be a little flurry about that so I just wanted to tell you about it.

Those are my remarks and I'd be happy to answer any questions.

**Mr Jean-Marc Lalonde (Glengarry-Prescott-Russell):** I could go for quite a length of time with questions, but I have to say that we only got this just prior to noon today and we had to be in the House for a couple of hours. I didn't get a chance to go through the whole report, but there are definitely some sections that are of concern, the 407, for example, that you mentioned. Who becomes accountable for those charges that were not collected, that 80,000 and 120,000 to be in the mail?

**Mr Lewis:** Who becomes responsible for collecting them?

**Mr Lalonde:** Yes.

**Mr Lewis:** I think a lot of those were collected. The licences weren't granted, so the money was paid.

**Mr Lalonde:** Yes, the 80,000, but the 120,000?

**Mr Lewis:** The 120,000 didn't happen, so their licences weren't suspended. I guess it's quite possible that there could be people who haven't paid out of that 120,000 to the company, but they will, in time, face the suspension of licences if they don't pay. As soon as the arbitration dispute resolution thing is in place, the program is going back in place. They're not going to get away with it; we've just had a delay. In the meantime they've got time to appeal, if they wish, on the charges. A lot of those people aren't going to appeal, I would suspect, because I would think most of them are probably owing. But some of them will have challenges.

**Mr Lalonde:** What I was really getting at is that if they don't collect that money, will the government be responsible for it?

**Mr Lewis:** I don't believe so.

**Mr Lalonde:** You don't believe so?

**Mr Lewis:** Well, I don't know that. I hadn't addressed that issue. It's a private—no, I don't think so. You know, I'm talking out of turn here. I haven't looked at it from



that point of view, but I don't know that the government is responsible for that.

**Mr Lalonde:** Because you really specify that there is no accountability mechanism in there.

**Mr Lewis:** I wasn't addressing it from the point of view of accountability for the funds from the government to the company but, rather, accountability mechanisms to permit the public to dispute the fare. You will recall one of the problems was they couldn't even get through on the phones. They couldn't raise the issue with the company; they weren't able to get through. The company was inadequately staffed and so on. That's what I was saying, sir.

**Mr Lalonde:** On the correctional services, being a former correctional services critic, through entertaining discussion with some of the detention centres, I've noticed that it's true that there is an inconsistency in enforcing a policy that exists, and the reason for that is we don't have those training requirements in place. Being a former training and development officer, I definitely learned through my visits to different places that there are people who have never received any training. Some areas are very easy to operate, but in others you have to face different types of characters in people. If we don't have the proper training in place, do you foresee—did you notice during your investigation that this was lacking?

**Mr Lewis:** In many cases, yes. I'm not making as strong a statement about it as you are, with your personal knowledge, but, yes, we noted that they were lax in training, and the ministry has undertaken to address that laxity that we've identified.

**Mr Lalonde:** They did.

The next point is the Family Responsibility Office. My colleague Caroline Di Cocco attended the press conference this morning, and she brought to my attention that you recommended some changes within the Family Responsibility Office. That must be because what they have in place at the present time doesn't work properly.

**Mr Lewis:** They've had a lot of problems, yes.

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**Mr Lalonde:** Because I remember when they closed the regional office, it started all sorts of problems. People have lost their homes, got their power cut off, because the Family Responsibility Office was not prepared to accept all the transfers that occurred from the regional office.

I was able to visit the Downsview office and one thing that I noticed: Rarely do we have the same person answering to our constituency office more than two weeks. Apparently, we have a person right now with whom we have direct contact once a week, but I recognize the fact that for those who are affected, who are not getting their money, it's a real headache, especially if you have to call and wait for over an hour on the phone. That apparently hasn't been corrected. This is why they have to come through the MPP's office, so that we can get through to them, and we are having the contact once a week only. A week's delay in receiving the cheques could make a big difference for a family. If you are

coming up with some recommendations, something has to be done with the Family Responsibility Office.

**Mr Lewis:** As was pointed out this morning, there is still a very high number of complaints regarding FRO. I can assure the committee that we will be monitoring this issue very closely. Outside of corrections, FRO constitutes the largest percentage of our complaints. Some 19% of our non-correctional complaints come from FRO. When they solve it, that's going to be a good thing for a lot of people.

**Mr Lalonde:** If they solve it.

**Mr Lewis:** Well, yes.

**Mr Lalonde:** I'm going to leave a chance for my colleague from the NDP, but just before I do, I notice that the second highest area that the complaints come from is WSIB.

**Mr Lewis:** Yes, sir.

**Mr Lalonde:** I could tell you that at the present time I'm having all sorts of problems with the WSIB. As of this morning, again, I've told the manager in there that they have—I went as far as saying, "The people you have in there are incompetent."

I would say today that it seems to me that some of the people who are handling the calls over there don't care about the public. I have a case right here at the present time that I've been after. I received a call about a month ago from the manager that the problem was going to be resolved in a week, on May 5. Today is June 15. No call back, and I call them and they don't return the call.

That person had an accident working for WSIB two years ago and hasn't received a penny since then. She lodged an appeal on June 28, after receiving a letter from WSIB if she wants to appeal on June 21, 1999. It's going to be a year soon: no call, not a single call yet. That's why I went to the minister. I spoke to the minister right that afternoon that the acting manager returned the call, on May 5. Since then, nothing has been resolved from that call. Today again, that same person who was supposed to write a letter of apology hasn't. I haven't received a letter, but he doesn't return the call yet. No wonder we get a lot of complaints that go to the WSIB, if this is the way we are running that department.

**The Chair:** Ms Churley.

**Ms Churley:** Thank you very much. I'm sorry I've been a little bit late here. It's a busy day.

I just wanted to start with the adoption disclosure. I brought that up. I will be introducing my bill, by the way, which is of no interest to you, but I just wanted to put it on the record, so this whole process, hopefully, will soon change.

**Mr Lewis:** I understand your position, Ms Churley, and of course it's of interest to me, but it's not my responsibility.

**Ms Churley:** Exactly. Let me clarify that: It should be of interest to everybody.

I wanted to ask you a little bit about this. When we met with you when you were first appointed we talked about this, and there was \$2.4 million allocated. They said that they could eliminate the backlog in 18 months.



What I'm trying to figure out here is, when would that date have started so that we know the end date, the 18 months when, in theory, we're going to have—

**Mr Lewis:** That's a good question. I'll speak to the deputy minister, if you like, and I'll get you what he perceives to be the start date, and I'll get back to you.

**Ms Churley:** Yes. When you investigate these complaints and the ministry comes back with a positive response, are you given any kind of work plan? Are you simply told, "We're allocating the money," and that's it, or do you have a work plan?

**Mr Lewis:** We certainly expect one, but we haven't got one yet.

**Ms Churley:** You haven't got one yet.

**Mr Lewis:** I could tell you what did happen in my review of these four matters. I just didn't know what to do with the adoption disclosure registry. It was 7.3 years, right?

**Ms Churley:** That's the official word, but some of us would say our experience was 10.

**Mr Lewis:** It was high enough for me. I asked to see the deputy, and when I met with the deputy, he at that point presented me with a letter which we have on file setting out the commitment of the ministry. That's within the last two months. We will monitor, and I will make particular note to get back to Mr Costante.

**Ms Churley:** Great. I would really appreciate that follow-up so I can keep track of it.

I want to come back to Highway 407. I was one of the ones who was getting bills that didn't seem belong to me since I hadn't—anyway, you don't need to hear my history, but I share the frustration with many, many people on that one and appreciate the work that you did to help clear that up.

One of the things, though, that interests me about it is—you talk about it in your press release and in your report—no accountability mechanisms for legislative compliance. I want to ask you a question about accountability for privatization. I understand that you probably, in your capacity, can't answer this, but perhaps you can. I want to tell you about a situation that is being debated in this House at this very moment: technical standards.

**Mr Lewis:** Yes, I know about that.

**Ms Churley:** I expect that you will be getting, eventually, some complaints about that. Right now, it has not passed, and I'm objecting, but, if passed, it will be operating in a complete accountability vacuum. It won't be answerable to you, the auditor, the privacy commissioner—FRO, I mean—anybody. "Freedom of information" is what I'm trying to say here. I'm getting FRO and FOI mixed up here. I'm not going to get into with you the philosophy around whether we should privatize these services or not, and it's not your role to get involved in that debate.

**Mr Lewis:** No, it's not.

**Ms Churley:** But there's a real concern, I believe, in terms of accountability, so that the public have that, not only in terms of what you're responding to here, for compliance, but accountability. We're talking about

safety, health and safety of Ontarians, because it's mostly safety acts. I don't know if you have a comment at this point in that general situation. I'm very, very concerned about it.

**Mr Lewis:** I would prefer not to address the technical standards matter, which is before the House at this time. OK?

However, there is something I can tell you which arose at the press conference this morning and that I perhaps should have alerted you to when I talked about that one about the minister. It was not a surprise to me that this morning I was asked about Walkerton. I had wrestled with what to say, if anything, about Walkerton. As you know, my act has considerably severe confidentiality provisions, so we won't talk about a lot of stuff that we haven't reported. But I thought about this one, and let me tell you how I responded, and maybe it'll help you in what you're questioning to some extent.

**Ms Churley:** Let me say I appreciate your position, but any help you can give me would be useful.

**Mr Lewis:** What I said this morning publicly was that Walkerton is a matter of enormous concern to us all, that it is a matter of concern to the Legislature, to the media, to the public at large. Obviously, in my position, both personally and as Ombudsman, I have an interest in what's happening there.

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I considered in that case—and I believe I'm not breaching anything here—the possibility of launching an own-motion investigation but, as you know, matters evolved very, very quickly in the government House on Walkerton and I did no more than consider. I will say to you that I am not investigating Walkerton at this time, because there are four investigations underway: the Ontario Provincial Police, the ministry, the coroner's office and, perhaps most importantly of all, the judicial inquiry, led by a very competent Court of Appeal judge. I have discretion whether or not to investigate certain things if there's room for me in terms of jurisdiction, but I have to exercise that discretion responsibly. I think this would not have been an appropriate time for me to say, "Me too," so I haven't said, "Me too" in Walkerton and I don't think that's a breach of confidentiality since I'm not doing it, I'm not functioning.

I did say that if I felt there was a gap occurring somewhere—because I'm going to watch it closely; this is something that matters to us all—I might consider whether I could add value at some point along the process. That's all I can say. What would those issues be at that point? I suppose they'd be accountability issues, if they arise, that aren't being covered. I have no doubt that—well, we all know the issue of accountability is going to arise in the Walkerton inquiry. I see that as a principal issue for government at any time, much less the tragedy case. Is that of any help to you?

**Ms Churley:** It is, and I appreciate your position on this.

I just want to say in all sincerity that the issue around accountability is critical as we move more towards the



privatization of public services. There are great fears, with the privatization of our safety laws, that without really good accountability we're going to have big problems down the road. I just raise it because I'm raising it every chance I can with anybody who will listen, because I'm very concerned about it.

**Mr Lewis:** Ms Churley, could I just comment that this report was written and off to the printers before Walkerton occurred and before I had thought in terms of technical standards. This report was written on its own issues.

**Ms Churley:** I understand that.

OK, the Family Responsibility Office I will leave to my able colleague Shelley Martel, who is continuing to keep a close watch on that. I would have questions on it today but I'm sure she will be following up in various ways.

I thank you very much for this opportunity.

**The Chair:** Because of the fact that we just got the report and we haven't had the opportunity to discuss it with colleagues or whatever, I think what the committee will do is keep it on the agenda and possibly, Mr Lewis, invite you back if there are concerns in the next short while.

**Mr Lewis:** I'm available any time you'd like to speak to me.

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** Thanks very much for attending this afternoon.

**Mr Lewis:** It's a pleasure.

**Mr Tascona:** I just have a couple of questions to deal with.

Page 19 of your annual report deals with written complaints and inquiries by provincial ridings. I take it these are both written complaints and written inquiries?

**Mr Lewis:** Those are written complaints and written inquiries.

**Mr Tascona:** Just looking at the breakdown for each riding, written complaints and inquiries—I take it there's no breakdown. You don't provide any breakdown that I can find for each riding, the particular ministry or the particular type of complaint that has been received. Do you keep that type of information?

**Mr Lewis:** Yes, I think we could probably pull it. I can tell you one thing, though. The ridings which have an apparently high number of complaints more often than not include a correctional facility, because we have a very high number of correctional complaints.

**Mr Tascona:** I'm just curious, because I have a correctional facility within my riding, Barrie-Simcoe-Bradford.

**Mr Lewis:** I know you do. I looked at your numbers.

**Mr Tascona:** I'm not sure what the basis is. I think it would be helpful for a member to know what kind of issues would be facing them within a particular riding, whether it was one particular ministry—

**Mr Lewis:** You'd like to see a breakdown.

**Mr Tascona:** Yes, it would be helpful, because this information is nice to know, but it's better to know if there's a particular administrative issue that we may be facing when we're trying to deal with our riding—

obviously subject to whatever issues are being dealt with. I don't know how you categorize them.

**Mr Lewis:** They're broken down pretty clearly in other parts of the report—

**Mr Tascona:** Pretty well by ministry.

**Mr Lewis:** —but you wouldn't be able to tell what was yours.

**Mr Tascona:** I like that set-up. If that's something you can consider providing to the committee or even considering in your future annual reports—

**Mr Lewis:** Would you like that on this year's statistics?

**Mr Tascona:** I'd like to have them.

**Mr Lewis:** All right, I'll tell you what I'll undertake to do. If they're pullable, they'll be pulled. I don't know whether it's possible, but it might well be, because I know they're all there. If you look at other pages you'll see they're very much broken down by ministry and even by program.

**Mr Tascona:** That would be helpful.

**Mr Lewis:** Sure.

**Mr Tascona:** The second question I have really deals with your jurisdiction. We've heard comments with respect to accountability, in terms of how ministries implement statutes or a policy with respect to the statutes, and comments regarding concerns with respect to private operations that are implementing or providing services that would be within provincial jurisdiction. I note your comments with respect to Highway 407.

I just want to know how far that goes with respect to a municipality where they have taken on providing a service which is within their jurisdiction and they've decided they're going to deliver that service, for example, be it water, waste management or other areas that they're known to deal with the planning and development of. Where do you get involved if you get a written complaint or inquiry from a concerned citizen who thinks a municipality is not implementing something in a particular area in accordance with what they may believe is the provincial law?

**Mr Lewis:** I don't have jurisdiction over them. Some ombudsmen do—British Columbia does, Manitoba does. I do not, although we frequently are in the position to alert people coming to us about where they might go. For instance, the municipalities are creatures of the provincial government and there are certainly areas where, if there was a default, the ministries might well be interested in knowing that. But I don't have a direct ability to deal with it. I simply don't. They could tell me to go away.

**Mr Tascona:** Maybe I could ask research to provide me with the legislative provisions for—you said Manitoba and British Columbia?

**Mr Lewis:** Manitoba and British Columbia, to my certain knowledge. Manitoba had Brandon, and Winnipeg was separate. They either had the right to contract the municipality for an Ombudsman by provincial law or to use the provincial Ombudsman. The first time out they went with a private Ombudsman and they apparently had a falling out or whatever, and they're now in negotiations



to go with the provincial Ombudsman. I think the issue is, as usual, money—you know, “What are my resources to look after Winnipeg?” But those I know for sure. I can’t tell you. I’m sorry, I don’t know.

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**Mr Tascona:** I’ll ask our legislative research to provide us that information. I’d like to see it. Maybe we could share it with the committee.

I don’t have any further questions. Thanks for your input.

**Mr Brad Clark (Stoney Creek):** Own-motion—as the Ombudsman, you have the authority to call upon an own-motion and set an investigation in place.

**Mr Lewis:** Yes, sir.

**Mr Clark:** One of the issues where you would set an own-motion in place is if you had concerns about accountability on a particular matter that’s within provincial jurisdiction?

**Mr Lewis:** Yes, I might. They would normally arise—not always, but normally—if I had a lot of complaints. I don’t have the resources to go after the individual complaints as such, but they reveal a system-wide issue. But I don’t have to have complaints to do it.

**Mr Clark:** Would there be an instance where there may not be a number of complaints but it could be something that is of compelling public interest in terms of accountability, as was mentioned earlier, Walkerton, for example? Clearly it could be argued right now that it’s compelling public interest, therefore an issue of accountability, therefore the Ombudsman could issue an own-motion for an investigation.

**Mr Lewis:** Speaking of course theoretically, I might well take the position, if I felt that there wasn’t other stuff happening, that the public interest in that case was so great that there was a need, and I would set off to do it. I’m not given free rein. The province might say, “No, you’re not,” and take me to court, because there’s provision in the act for dispute in the Divisional Court as to whether I do have jurisdiction over issues. Up until now I think that’s operated about three times to expand the jurisdiction of the Ombudsman, but it could work the other way. As long as there’s somebody personally affected, that gives me the basis for moving it on my own.

**Mr Clark:** So in this case, since there’s a compelling public interest and clearly some people have been affected, if you were of the opinion that the investigations that were under way were not going to be addressing the issue of accountability, you would have had opportunity to issue an own-motion yourself. Is it fair to state that you’re comfortable at the present time with the inquiries that are underway with Walkerton and that they’ll be addressing accountability based on the terms of reference?

**Mr Lewis:** I’ve read the terms of reference of the judicial inquiry. I have some confidence in the capacity of that inquiry to attend to the issues, yes. I’m not able to give an imprimatur. Time will tell. But it’s what caused me, along with the others, to pull up my reins and not do it.

**Mr Clark:** So at the present time you’re satisfied that they’re going to be addressing the issue of accountability and if at some time—

**Mr Lewis:** I surely hope so.

**Mr Clark:** And that’s why you didn’t issue an own-motion yourself.

**Mr Lewis:** I think that’s fair.

**Mr Joseph Spina (Brampton Centre):** Thank you, Mr Lewis and Ms Ray, for joining us.

I had a couple of questions, one of which really springboards from Mr Tascona’s first question on your breakdown by riding. I found a little ironic your answer that perhaps if you have a correctional institute, that might inflate the numbers. There’s no question when you break it down by ministry, the correctional institutions soar far and away.

**Mr Lewis:** Right.

**Mr Spina:** The first question, really—while I’m on the corrections, let me ask you this: Do the majority of inquiries, complaints, come from inmates? Is that generally the source?

**Mr Lewis:** Yes, sir.

**Mr Spina:** What would be the context—medical treatment, that sort of thing?

**Mr Lewis:** I can tell you that the majority of those complaints, 20% of the 6,636—is that about right?

**Interjection:** Yes.

**Mr Lewis:** Some 20% of the complaints from corrections last year had to do with access to medical services. That’s the number one complaint. That goes across issues like segregation, where there’s an obligation in policy for an inmate to be seen before being put in by a medical expert, be it a nurse or a doctor, before entry and after release.

There are issues of transfer from one institution to another, and a lot of that that goes on, especially because there’s been a lot of development and so on, so they’re moving prisoners. A person may have been on medication in one institution but the records haven’t gone with that inmate so he’s not getting the medications in the new place. They can be quite serious. They can be anti-depressant medications; they can be any number of things. They could be methadone as well. A whole range of things are possible. There are issues of allegations of people simply not being able to get access to a doctor or a psychiatrist—that’s one of the big issues—for psychiatric assessment or treatment. I might say that I understand the medical officer for corrections—the principal officer, not the local officers—is quite alive to these issues, quite aware of our concern.

**Mr Spina:** I’m presuming there you have communicated back to him or her and they are now in the process of trying to rectify that situation.

**Mr Lewis:** Yes. I want to be clear and I think I should fairly say this: The ministry has been quite co-operative with us on this. I’m not saying every institution, every facility, is. That’s not necessarily the case.

**Mr Spina:** You’re trying to address it from the top down, essentially.



**Mr Lewis:** Yes, because they have the authority to do anything. I don't have any authority.

**Mr Spina:** Hopefully, perhaps next year, we might see a reduction in those numbers.

**Mr Lewis:** I don't know. There is probably going to be a reduction in the facilities. You know that a number of facilities are slated for closure. I think some 30 are closing. A lot of them are really ancient.

**Mr Spina:** With some of that centralization there will be less movement of prisoners; who knows?

**Mr Lewis:** Yes.

**Mr Spina:** We're not asking you to be clairvoyant here.

**Mr Lewis:** Yes, but I have some views. I'll wait to see what happens. Why should I speculate, right?

**Mr Spina:** Getting back to the other issue, I would be very interested also in getting a breakdown of the number of inquiries by riding, broken down by ministry, in order to determine which are the most difficult within my riding. I draw the specific example—it's perhaps easy for Mr Tascona to say, "Well, there's a correctional institute in Barrie and you've got Barrie-Bradford—

**Mr Clark:** Simcoe.

**Mr Spina:** Yes, whatever it is. But I look at Brampton, and OCI and Vanier are over on McLaughlin Road on the west side of town, yet in Brampton West-Mississauga, exactly where that institution is, there are 54 complaints. On the east side of town, Bramalea-Gore-Malton-Springdale, there are 41 complaints. Yet in Brampton Centre I have 222, by comparison. So you see my point, sir.

**Mr Lewis:** I can see why you're interested.

**Mr Spina:** Yes. The inmates are complaining and they're not in my riding. This is why I'm trying to figure out what the heck is going on here.

**Mr Lewis:** I think that's good. If I were in your position, I'd ask that question.

**Mr Spina:** Anyway, that's why I would appreciate it. There may be other mitigating factors.

**Mr Lewis:** I don't know, sir.

**Mr Spina:** No, and I'm not asking—

**Mr Lewis:** Maybe they don't like the way you're doing your job.

**Mr Spina:** That's why I would appreciate as well a breakdown by ministry—

**Mr Lewis:** I'll really try to do that for you.

**Mr Spina:** —because there are some other things that perhaps could be influencing it. As an example, I know there is a lobby group called FAD—Families Against Deadbeats—and that group of course is tied in with speeding up and cleaning up the process through FRO. Those people were created partly at my instigation and are based in my riding. So if I knew that some of those complaints had to do with the family court, FRO, I could understand that—

**Mr Lewis:** It would give you some comfort.

**Mr Spina:** Yes. Then I know that's understandable. But on the other hand of course if it's something else—so we would appreciate that. If we wrote to the Ombuds-

man's office and requested that, and you were able to access that—

**Mr Lewis:** You've already asked. That's good enough for me. If I can possibly do it, I'll do it.

**Mr Spina:** We appreciate it.

**Mr Lewis:** You're very welcome. And if I can't do it immediately, I'll try to have the system converted so that in future it can be done. I've probably committed a lot more money than I've got.

1630

**The Chair:** It appears, Mr Spina, you haven't been reacting to your constituents. Should we pursue that point?

**Mr Clark:** Can we touch on the Ministry of Health for a moment?

**Mr Lewis:** Yes.

**Mr Clark:** I just went through a long process of consultations for Brian's Law, amendments to the Mental Health Act and the Health Care Consent Act. Through the consultations it was raised that the Ombudsman doesn't investigate issues regarding mental health, yet I notice in your report mental health centres, psychiatric hospitals, psychiatric patient advocates, psychiatric review boards, and there may be some mixed in, in other areas in health.

**Mr Lewis:** It's quite irregular. I'll give you an example. We used to deal with the Queen Street Mental Health Centre, because of its structure and its provincial oversight. We did not do so with the Clarke Institute. They merged. We lost jurisdiction. It took on the model of the one that was outside our jurisdiction.

It's like the colleges and the universities—I think I'm answering this correctly, but you can help me, Wendy. We have no jurisdiction over universities. We do over community colleges because of the structure of the government's role in the appointment of its board. You'll see a report in here on a hiring process at a community college where we intervened, and they've made some improvements as a result. But I couldn't do that at U of T. So there are spotty areas where I can and cannot intervene. I don't have any jurisdiction over hospitals, although a lawyer tried to tell me I did because of a Supreme Court of Canada decision.

**Mr Clark:** If there were concerns with regard to systemic difficulties in mental health for psychiatrists, you could investigate?

**Mr Lewis:** For psychiatrists?

**Mr Clark:** For psychiatrists, if someone were saying there was inappropriate use of restraints, as an example.

**Mr Lewis:** In a particular institution?

**Mr Clark:** In a particular institution or with a particular doctor. How do you deal with those issues?

**Mr Lewis:** Could I have a moment?

The doctors would be disciplined by the College of Physicians and Surgeons. There is the Health Professions Board, and we would have jurisdiction over their stuff, if appeals went to them. But the psychiatric institutions, where we would normally have had, and still do to some extent, some jurisdiction, are becoming fewer, so we lose



jurisdiction; it's eroding. That's really what is happening. Brian's Law is going to be a matter of interest.

**Mr Clark:** With Brian's Law, the treatment will be moved more to the community, and that seems to be the way it's going in all jurisdictions. There seems to be divestment from psychiatric facilities to more community treatment. What role does the Ombudsman have in that situation?

**Mr Lewis:** Very likely none. I used to be a judge in the Criminal Division from 1979 to 1985.

**Mr Clark:** I'd heard that.

**Mr Lewis:** That's when the whole idea of starting to move psychiatric patients out into the community really got rolling, while I was a judge. I used to sit in bail court from time to time and it was really something to see, because the police were the ones who were dealing with those people who had been dealt with previously, and they were being dealt with now in the criminal justice system, not necessarily because of severe crimes, but there they were. There was a divesting. We don't have jurisdiction in a lot of that stuff.

**Mr Clark:** I'm not sure if you know this: When is the last time the Ombudsman Act itself was reviewed?

**Mr Lewis:** Do you mean when it was last amended or looked at?

**Mr Clark:** Amended, reviewed, whatever.

**Mr Lewis:** There was a review about five years ago. There was an amendment just recently. I just mentioned that. That's when you reduced the term from 10 to five years. But a general review took place in about 1997 or 1996.

**The Chair:** It was about four years ago, I believe. I think it was in the second year of our term. We spent a fair bit of time on it.

**Mr Lewis:** I think there was a lot going on at that time, Mr Stewart, and I don't want to go into it particularly. I wouldn't want to have to see that review again, but it's up to you, of course.

**Mr Clark:** Do you find yourself in a position at any time where you're commenting as the Ombudsman on the act or the jurisdictions that are within your—

**Mr Lewis:** I commented on it this morning in a way that I probably shouldn't have. I was talking about the confidentiality provisions, where I couldn't tell people some things. I might have said, "I'm not always comfortable with this." My staff, the lawyers, keep telling me, "You've got to be really careful, Lewis, because you talk a lot." I understand that the Ontario act has the strongest, most stringent confidentiality provisions across Canada. There are things that I said I'd really like to talk about. I don't want to give away people's names. There's privileged information. That's why I felt I ought to say

something about Walkerton. I don't want to look as though I don't know about it, for heaven's sake; of course I do, institutionally. But I also said, "I'm not asking for the act to be amended," even though I haven't got entirely comfortable with the strictures within which I work yet. It's only been four months.

**Mr Clark:** You're doing fine so far. Is it possible to get for me, or maybe even the committee, some references in terms of ombudsmen across Canada and the jurisdictions that fall under the provincial Ombudsman, like a chart showing which provinces have different—

**Mr Lewis:** Do you mean the general jurisdiction of each provincial Ombudsman?

**Mr Clark:** Yes.

**Mr Lewis:** The question was asked of the research officer, I believe—

**Mr Clark:** OK.

**Mr Lewis:** —but if I can assist in that in any way, I would be happy to, or staff would. For some reason I have to be out of here at 4:45. I think it's the press; I'm not sure.

**The Chair:** I'm going to ask you one question which is very short, I'm quite sure. On the ministry responsible for women's issues you had one complaint. Because that ministry is now involved with colleges and universities, if there are additional women's issues, complaints etc, would they now be included in that? I'm surprised there has only been one complaint.

**Mr Lewis:** These are program areas rather than complaint categories.

**The Chair:** Sorry, I shouldn't have used that word.

**Mr Lewis:** The program doesn't exist, that's really the problem.

**The Chair:** In native affairs, where there were three, do you deal with them if they relate to Ontario, to the province, and any other ones you then refer to the federal government?

**Mr Lewis:** The federal government, it could well be.

**The Chair:** That's how you would do it?

**Mr Lewis:** Yes, sir.

**The Chair:** Are there any other questions? As I said, we'll keep it on the agenda because it will give us more time to have a look through it. Mr Lewis, we may get you back. I do appreciate it. As we had said before, I hope we can get together again in the fall.

**Mr Lewis:** I look forward to it.

**The Chair:** Each term, I think it would be very advantageous. Again, we appreciate you coming. Ms Ray, thank you very much for coming along as well.

**Mr Lewis:** Thank you very much.

**The Chair:** The meeting is adjourned.

*The committee adjourned at 1640.*

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First Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLY

Thursday 30 November 2000

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Jeudi 30 novembre 2000

*The committee met at 1601 in committee room 1.*

## SUBCOMMITTEE REPORT

**The Chair (R. Gary Stewart):** Ladies and gentlemen, we'll call the meeting to order. The first thing on the agenda is the report of the subcommittee dated Tuesday, November 28. Can we have a mover for the report, please, before discussion?

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** I move the subcommittee report.

**The Chair:** Do you want it read out or do you want to chat about it? Maybe we should read it out for the record.

Your subcommittee met on November 28, 2000, and has agreed to recommend:

(1) That the committee schedule consideration of private member's Bill 135, Public Hospitals Amendment Act (Patient Restraints), 2000, on Thursday, December 14, 2000, and on Wednesday, December 20, 2000.

(2) That the committee clerk request the House to authorize the committee to sit beyond 6 pm on Tuesday, December 14; and to meet on December 20 (a day not a regular meeting day of the committee). The committee will commence meeting at 3:30 pm or following routine proceedings on both days.

(3) That notification of the hearings be placed on the Ontario Parliament channel asking any interested groups or individuals to contact the clerk of the committee by 5 pm Wednesday, December 7. The sponsor of the bill will also provide the clerk with a list of organizations to be scheduled.

(4) The sponsor of the bill will be provided with an opportunity at the outset of the hearings to make an opening statement.

(5) Witnesses will be allocated 15-minute time slots for presentation and questions by the members.

(6) Amendments to the bill will be distributed as available. Clause-by-clause will commence immediately following the completion of public hearings.

(7) That the research officer provide the members with information on medical research and jurisdictional comparisons by Monday, December 4, 2000.

Discussion?

**Mr Brad Clark (Stoney Creek):** First, I want to apologize for being late for the committee, but I was having discussions with Frances Lankin and Minister Elizabeth Witmer about the subcommittee's actual report.

I'm going to make the recommendation, and both the Minister and Frances agreed to it, that this particular subcommittee report be refused and rejected. It is our commitment to Frances that we will be going to hearings on her bill, but we would like to do it after Christmas—between January and March is our intention—and we're working with Frances in terms of some changes to the bill and she's doing some drafts to it. That allows us an opportunity to talk to the OHA and a few of the other stakeholders and allows everyone more time to plan for the hearings.

So we will be dealing with Frances to set the actual time frame in place.

**Ms Marilyn Churley (Toronto-Danforth):** This is the first I've heard of this, and obviously I'm going to take your word for Frances having agreed to that. If she does, I would certainly support it.

I just wonder about the issue around the real possibility that the House may prorogue on the 21st, or whenever we get out, and that unless there's unanimous consent the bill will die. Was that discussed at all?

**Mr Clark:** That has been discussed, and apparently the House leaders are now discussing it.

**Ms Churley:** But if I may, Mr Chair, was it discussed with Frances? Because there's no guarantee, I understand, that it will be held over. What I'm trying to get at is: was she aware of that and still agreed to this timing?

**Mr Clark:** She understands very clearly. We're going to be sitting down with her before Christmas and before the House prorogues to talk about some of the amendments she's proposing to the bill itself. She has already met with legislative counsel, and the commitment from the minister and myself was that this would be dealt with after Christmas, between January and March, for hearings. That was the commitment. How they do that—

**Ms Churley:** Just for the record, and if Ms Lankin supports this, I will obviously support it: the process is such that when the House prorogues, any bill that's on the order paper—and we've been there with my adoption bill—anything on the order paper that hasn't been completed dies unless there is unanimous consent to carry over certain bills, and usually there's some horse-trading between the parties about which bills. The problem, of course, is that sometimes—in fact in the last two Parliaments, there were upsets in the Legislature and by midnight we never got to the motion that there would be unanimous agreement to carry certain bills over. So as



with that strong language and not have an impact in the hospital setting currently.

**Dr Zorzitto:** There may be a number of reasons. Education is certainly a part of it, and also the physical environment. The physical environments of most of our hospitals today are really not geared to dealing with a fairly large number of elderly and confused people who wind up in an acute care hospital. So it's the number of confused elderly who are in the hospital. There is a certain body of knowledge that is not being transmitted to general staff, and the actual hospital environment doesn't allow for people wandering around, doesn't allow for maybe a safe private room where a person could stay, maybe doesn't allow for other means of having some supervision there.

**Mrs Papatello:** As a for instance in this case, the doctor is the one who is going to say, "This is what you are to do with this patient and this is what you are not to do with this patient." If you are a patient who is confused in Windsor, the staff will beg family members to stay all night, because the patient is not in control. If that same patient were then sent to a London hospital, like university hospital, that hospital administration will call a private company and bring in a person to stay overnight with the patient. That's because the London hospitals have funding to pay for that staff person, whereas the Windsor hospitals do not have the funding to pay for that additional staff person. This is a very concrete example, within the last two days, where this has happened and it is a function of the budget. But if the doctor who is in charge of the patient were to say, "I order this patient not be left alone," which may then preclude the use of restraint, that in fact is the role that the doctor would play. Is that how it would pan out in real life?

**Dr Zorzitto:** Yes. That additional person could also be requested by, let's say, the nursing profession who say this person requires more one-on-one supervision or attention. It doesn't necessarily require a doctor's order. But restraint does.

**The Chair:** Ms Lankin.

**Ms Lankin:** Just picking up on Mrs Papatello's point about the difference in hospitals, I've seen, for example, within the Toronto area, very different treatment of confused elderly. I can cite one hospital, for example, the Orthopaedic and Arthritic, which has a different atmosphere in it, because they're not treating diseases. They're treating bones, right? It's hips and knees, and there's just a whole different mentality.

Many of their patients are elderly and many of those patients coming through a major operation, spinal or hip operation, have post-anaesthetic confusion for a period of three or four days, and it is regular practice for them in the evenings to bring in a bed-sitter as part of the service that they provide, and yet other acute care hospitals don't have that. It's a question of staffing allocation, not necessarily funding of the hospitals but the decisions within the hospitals. Are you aware of different hospitals' approaches to this issue?

**Dr Zorzitto:** Personally, most of the acute care hospitals that I have been involved with seem to be pretty much the same.

**Ms Lankin:** And that is?

**Dr Zorzitto:** That is that mostly they use restraints.

**Ms Lankin:** We heard this morning the Ontario Hospital Association indicate that there's just no data to say whether or not restraint is being used frequently, more frequently, less frequently, and I think that's true. There isn't hard evidence at this point in time. There are studies that have been done at moments in time—

**Dr Zorzitto:** Yes.

**Ms Lankin:** —that give us some indication of the higher frequency of use of restraints in Canada versus other jurisdictions, but the members of the alliance are people who serve that age population in our hospitals in the GTA in particular. From your experience, do you think there is a high frequency of restraint being used? Could you describe for us what your experience is?

**Dr Zorzitto:** My experience in the acute care facilities I have worked in is that physical restraint use is quite common. I can't say whether it's 50%, but it is common.

**Ms Lankin:** Maybe just one last question. Compared to long-term-care facilities where we actually have regulation in place that says, "Use least restraint," there's a law, have you had experience there? Is there a difference in the—

**Dr Zorzitto:** I have episodically gone to attend at nursing homes or homes for the aged. It seems to me that it's a much more home-like environment—maybe many more individuals who deal with attendant kind of care, less formal but still supervisory care—and they may not be quite as agitated in that environment as well and not requiring the various restraints.

**Ms Lankin:** More age-appropriate care.

**Dr Zorzitto:** Right.

**The Chair:** On that, we will finish. Thank you very much for your presentation, Doctor. It's a pleasure.

1430

MEL STARKMAN

**The Chair:** The next presenter is Mr Mel Starkman, please. You have 15 minutes, sir, either for presentation and/or questions or both. Welcome.

**Mr Mel Starkman:** I'll just take some water, if you don't mind. I take medication, and my mouth is very dry.

You have in front of you a deputation that was sent to you by Don Weitz, a close friend of mine. I'm Mel Starkman, the Mel who is mentioned in that particular deputation.

I basically agree with this bill, in what it's trying to do. The only thing I would have to say is that the bill should cast its net a bit wider. I know the Mental Health Act does have provisions for restraints and that's the problem we're concerned about, that those regulations are being used and abused. People go into mental hospitals, they have problems and they're supposed to be cared for by the caregivers. This bill doesn't designate, other



than public hospitals, but a wider net should be cast, as no one is speaking for the consumer-survivors therein. We have people suffering from various illnesses and injuries who are prone to be put under restraint, which this bill speaks to, but inadequately in an age of fuller restraints.

In my situation, I was in mental turmoil, not physical turmoil, as I will describe below. How much worse off are those who are ill, old or injured? I would argue, after my initial psychiatrization, everything that occurred to me after that event was iatrogenic, medically induced.

For the purpose of this submission I am calling myself a survivor of the mental health services. For three to five years I was under physical restraints, off and on. Since 1966 I have been in and out of the system, first in Branson hospital, then the Clarke and then Queen Street, or satellite facilities such as a home for special care, a men's boarding home and now a retirement residence, still as an outpatient of Queen Street. I have been under physical, mechanical, chemical and what I call menial restraints. I have also had 38 shock treatments over a period of two years from 1966 to 1968, and that is part of the problem that I carry with me to this day. Whether or not something else could have been done, I don't know; I'm not a professional. I was a professional archivist, and I was working at my job off and on for close to 20 years and I was going into hospital every few months getting shock treatments. The long and short of it is they didn't do me any good, despite what I was told.

We need to pierce the veil behind excessive restraints for "mental patients" who are treated on a sliding scale from neglect to abuse.

My memories of being in restraints aren't very distinct, just fleeting flashbacks. The memories have left emotional and some physical scars. In various numbers of leather straps I was very uncomfortable and agitated, at times incontinent and delusional. My nurses' and medical care notes that I do have from my review board hearing make for very interesting reading from 1991 to 1993. I reviewed them last year and noticed that it was written in when I was in restraints, what time I went into restraints, but it was never written in when I left restraints.

I could have been in restraints for two hours, four hours or six hours. I have no recollection, and the notes don't make any particular note of that. I know I was on Q15 observation, and the nurses looked in on me every now and then and they didn't do very much. I know that I was struggling in these restraints and finally I drifted off into some kind of delusional stupor. If I was doing badly in the restraints, their answer was chemical restraints. They would give me something in the arm or the buttocks or something of that nature, and I would drift off into sleep. As I said, it was a very delusional sleep.

They did say what was happening before I went into restraints and then they debriefed me when I came out of restraints. Debriefing was, "Well, how did you feel when you were in restraints? Can you talk to us now? Can you behave now?" What was I supposed to say to them? As

you notice, I am very nervous now, even though I'm six years out of hospital. I'm still under a lot of medication, which is making me shaky or what you want.

As I said, in each case I had no idea how long I was in restraints. No mention was made in the notes of possible lesser, least-restrictive restraints.

While under restraint, you become agitated, fearful and insecure, to say the least. Restraints can lead to muscle deconditioning or lack of co-ordination, putting one at risk of a fall. I've seen a number of studies which have shown a marked decrease in falls from less intrusive restraints. The greater the restraints, the higher the injury factor.

In countries like Great Britain and New Zealand, the use of restraints is a rare option.

I couldn't find it in my case notes, but I distinctly remember being tied up in rough rope, not straps or anything of that nature but rough rope. I was tied up from the top of my head through my arms and down to the bottom of my feet. Who ordered that, I don't know. I can't believe it was the doctor who ordered that. I think it was just—I'm looking for the word—some malicious orderly who thought they were having some fun or something like that by putting me in that kind of restraint. Every time I figured out why I was in restraints, that something was wrong, they said, "You're OK now. You're out of the restraints." I've read the Mental Health Act with the various kinds of restraints you put in it. I have never seen rough rope being included.

Nobody else on the floor was having this done to them. This was in the rehabilitation ward and, as I remember correctly, I don't think in the rehabilitation ward there was anybody else who was on restraints. There were people who were in seclusion rooms, that I admit, but on the rehabilitation ward there was nobody else who was on physical restraints. I was the only one. Why I was in rehabilitation, I don't know. I was much better off on the other floors, where I wasn't in restraints, where I wasn't as agitated and as nervous as I was when I got on the rehabilitation floor.

Chemical restraints are another story altogether. The effects and the side effects are very dangerous. I recommend that all survivors and "mental health professionals" read Peter Breggin and David Cohen's book on drugs, *Your Drug May Be Your Problem*. My problem is that I live in a city where there are no doctors who can wean me off the pills. Never again will I try—I tried to get myself off the pills. I did a very foolish thing. I went off the pills cold turkey and I lasted for two years, but then I got horrendously sick. So I can tell you that chemicals do hinder rehabilitation.

Some restraints are very radical, meant to subdue you, like shock treatment and psychosurgery. The former is still being used even though we don't have very many statistics about that, but we know it is still being used, while the latter is used only with informed consent, or so-called informed consent. Bill 135 unfortunately does not address these problems.



Ombudsman. He was a criminal lawyer; I was a criminal lawyer. The criminal bar still has a joke, that the government of the day didn't bother to give Arthur a budget and he still managed to overspend it. You'll find that our celebration is going to be considerably more modest than his would have been.

We intend to deliver core business outcomes against organizational standards. I want to tell you that one thing I found when I went into the office was a very fine set of policies, systems and procedures in place. The tools are there. The issue is to ensure they are implemented to the best effect. We have a computerized case management system that was developed in-house. It is the subject of inquiry internationally. It works extremely well and has assisted in reducing backlogs to a very low level. It allows the staff to operate knowledgeably and more quickly on files than was the case previously. It does not mean we don't have some that don't fit in that. We have a complaints resolution manual, a performance accountability manual, a human resources policy manual, an administrative procedures manual and well-articulated processes.

The challenge now, and we're in a unionized environment, is to see that those are put into full effect in the workplace and on the floor and still maintain wellness in the workplace. That's a challenge. It's a real issue and one we're working on very hard.

I want to tell you, something happened this morning that was absolutely fascinating. We knew it was coming, but only for a week. The bargaining agents for our union, and it hasn't always been a happy relationship, held a breakfast for the whole staff this morning. It wasn't a Christmas party, but it was sort of like one, a very nice event and a very strong symbol of what's happening within the office today, in my view. I'm very pleased about that. That'll help us to do the very things I'm talking about here: getting the accountability mechanisms working well.

We intend to enhance organizational capacity through human resources management that brings out the best in our employees, generates innovative solutions and supports long-term performance improvement. I've reviewed my management structure and made some changes. The most important—I want you to know this because I think it's really an important thing—is I have created a new position in the office. By reason of the very large budget cuts over the past several years and the several iterations of restructuring within the office, what was once the position of director of investigations was taken out and the office didn't have one. I found that odd, but I understood how it came to pass. But the real authority of the Ombudsman is to investigate. We have staff who do just that. They didn't have a director; they had managers but they were middle managers. I created a position of director of investigation and complaints resolution, because not everything goes to investigation. A lot of stuff is resolved very quickly and so on. We had an extensive competition for that position. I am really pleased. We had 106 applicants and we have hired Canada's first woman

chief of police, Lenna Bradburn from Guelph, who was the chief there for six years.

If I can take an aside for a minute, during the interview I said to her, "I notice from your resumé that you were a union steward for the Toronto police union when you were a constable." Yes, she was. "I notice you became an elected member of the police association executive and in fact their corporate secretary." Yes, she did. "So is it fair to say that during that time I was your public enemy number one as complaints commissioner?" "Oh, yes, and I picketed your office."

She has tremendous experience on both the union and the management side. She understands a unionized workplace. She's very bright. She just began three weeks ago. I think it's going to take an awful load off Fiona. It has really been a burden for her. It's just been back-breaking. I think that is really significant to the fulfillment of the things we have put into our plan.

We have an extensive corporate training program to ensure that staff skills are kept relevant and continually developed: investigative training, alternative dispute resolution training, and dealing with angry members of the public, of whom we have more than a few. I had one today on the phone. In fact, I'd just written a speech that I'm giving next week that deals with the always complaining and often hostile complainant, and Fiona, I guess, decided she wanted to test whether what I was going to say was what I really understood and believed and so she gave the man to me and it was an experience.

We're instituting an employee long-service program and looking at our employee recognition program. We're looking at succession planning within the organization, not at my level—that's your job and I'm sure you'll get to it—but I think it's important for every organization, and at Fiona's position we have to start developing the capacity to fill.

Finally, we're looking at cross-training opportunities, job rotations and job shadowing. The staff have gone through a period of some difficulty, given the transition, and I think we're through it and on the verge of being a much more effective office. I wanted to share that with you and I hope you find that of interest. I'm happy to have any questions you might have.

**Mr Wayne Wettlaufer (Kitchener Centre):** I have a couple. Mr Lewis, last year—I'm not sure whether it was when we were doing the interview or whether it was your first report to the committee—there was some concern about a caseload backlog and I was wondering what the progress is on that.

**Mr Lewis:** We're doing very well. It's really quite—

**Mr Wettlaufer:** In terms of percentages?

**Mr Lewis:** Can you tell me that, Fiona?

**Ms Fiona Crean:** There is no backlog.

**Mr Lewis:** That's what I thought.

**Mr Wettlaufer:** There is no backlog? Very good.

**Mr Lewis:** That can vary from week to week, but not much. We've achieved that.

**Mr Wettlaufer:** The other question I have is rather delicate and I'm sure you can provide the answer. When



Ms Bradburn was chief of police in the city of Guelph, her term was rather controversial at times. I was wondering if you could shed some light on that.

**Mr Lewis:** Sure. It's interesting. Up until three weeks ago, four weeks ago, there were three women who were chiefs of police in Canada. There were Lenna, Christine Silverberg in Calgary, who also came from Toronto, and there was, as the commissioner of the OPP, Gwen Boniface. I know enough about policing to know that is an extraordinarily difficult environment for a woman to be in, to be a chief, and Lenna was very young when she went in; she was 34 or 35. There's no doubt the board was courageous. I think they were right. She was bright, but she was not only bright, she was young, she was a woman and you'd have an awful lot of older officers there who would have more than a little thought about that.

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She was a change agent. That's what she was. She went very hard into community policing initiatives. She went into a levelling of the ranks in the force, which is always a matter of tremendous fury in a police force. When Toronto did away with the rank of detective, it had horrible ramifications for then-Chief Marks. So when Chief McCormack came along, he stuck the rank back in again. You would be familiar. I think last year the association held a vote of its members and came up with a 94% kick-her-out rate.

That happened to Christine Silverberg too, and I'm not impressed. I'm sorry, I'm simply not impressed. I know the business and I know the level of anger. I also know that a good many of the people don't know what they're voting about. I looked at the press on her leaving and the local Guelph newspaper—I can't comment on this; I don't know its politics or anything else—was very supportive of her and quite condemnatory of the treatment she received from the association. She's courageous, and that's what I want. She's innovative, and that's what I want. She may well have problems with me, I don't know, but I don't think I got a failure. Let me be very clear about that.

Christine Silverberg is terrific. You wouldn't believe the trouble she went through when she got out there, and it stayed; it never ended. They have to have a lot of confidence and ability to handle it. Six years is a long time. Chiefs don't stay very long usually; they really don't.

**Mr Wettlaufer:** Thank you.

**Mr Lewis:** I think it's a fair question, by the way, Mr Wettlaufer. I considered it pretty closely.

**Mr Wettlaufer:** I think it's good for everyone on the committee to know too.

**Mr Lewis:** Yes. Thank you.

**Ms Churley:** You say there is no backlog. You talked earlier about having to streamline and focus on particular areas, I guess, and in systemic situations. I'd like a little bit more information about what kinds of cases you were doing that you can no longer do or choose not to do, given the new strategic approach.

**Mr Lewis:** We're not not doing any kinds of cases. What we're doing is looking at them from the point of view of, can we do them in batches? Do they raise a sufficient number of complaints in an area that we should be dealing with it as a system-wide matter, rather than doing the individual investigations where we're not necessarily going to come up with a result that is going to particularly benefit the person, but they raise issues we can deal with on a broader level? Then we do it. We've dealt with the Family Responsibility Office in the past. There's been a lot of that stuff.

In 1996 there was a backlog, but they were down to 68 staff at that time from 135. No matter how you slice it, it's going to have problems. But we've built it up a bit. We're up to about 85 now. You're not going to say I'm an empire builder for that. I don't know that except for the position for Lenna Bradburn, we've actually increased anything yet. Have we a little bit?

**Ms Crean:** No, but I think the point too is that the Board of Internal Economy recognized that two years ago and provided the Ombudsman with sufficient funds to get rid of the backlog.

**Mr Lewis:** And the systems that are now in place are very helpful in doing that.

**Ms Churley:** You talked about budget cuts. How much is your budget now? I'm sure that information is available but I've forgotten.

**Mr Lewis:** Just over \$8 million.

**Ms Churley:** What was it?

**Mr Lewis:** A 30% cut.

**Ms Churley:** The reason I'm asking these questions is that I'm very pleased to hear you're doing some education and getting information out. You say, for instance, that Metro Toronto is underrepresented. Of course the reality is that as soon as you make yourself more known out there, you're going to have more cases. I presume you're planning for that so you won't end up with a backlog again.

**Mr Lewis:** That's right. We don't want a backlog, so we have to figure out what we're going to do. I don't want a complaints shop, but if I'm successful in getting the word out, there are going to be more complaints. I've got to cope with them. That's why we want to get the shop in order, to be able to do it, if I succeed, through public education. That's really what it's about.

**Ms Crean:** The other side of it is that the more public education you do, fewer non-jurisdictional complaints will come in.

**Mr Lewis:** That's true.

**Ms Crean:** So a large part of our work has been re-referring or referring people elsewhere. We need to get the word out about what we are able to do versus what we can't.

**Ms Churley:** I want to ask you very specifically about adoption disclosure.

**Mr Lewis:** Gee, that's a surprise.

**Ms Churley:** I have my notes. I brought them from the last meeting. I couldn't find them anywhere, and



that's why I was digging through my briefcase. It was on the back of this and I'm trying to turn it over.

**Mr Lewis:** OK, and I've got mine.

**Ms Churley:** You've got yours. You were expecting this question.

I've been receiving complaints again from some members in the adoption community. I remember that the last time you outlined, on adoption disclosure, one of the three concerns you specifically brought up when you first came. I asked you then about the \$2.4 million that was allocated—I'm having trouble hearing myself talk here—and if they gave you a work plan at that time as to how they were going to use that to achieve dealing with their backlog. I asked you the date the backlog would be eliminated, because at the time we spoke my information told me it was seven to 10 years.

**Mr Lewis:** That was right.

**Ms Churley:** At the time you said you weren't aware of a work plan and didn't know what the end date was, so I just wanted an update.

**Mr Lewis:** I replied to that. I wrote to you on June 28, or I wrote to the committee.

**Ms Churley:** Yes, you did.

**Mr Lewis:** I received the information from the then deputy, but I have updated information today.

**Ms Churley:** Yes, that's what I wanted.

**Mr Lewis:** Yes, I've got that.

**Ms Churley:** You're very prepared. You knew this was coming, absolutely.

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**Mr Lewis:** It's an important issue. I'm really concerned about it. I think 8.1 years was the average before they would start an investigation. So this was a pretty serious issue, and that was an own motion investigation. They committed to allocate \$2.4 million and they did it. They committed to hire an additional 24.5 staff and they have now done it. They said they would eliminate the backlog in 18 months. You wanted to know what was the start date. They said they were starting the 18 months running in July 2000, as a start date, with a targeted completion date of December 2001.

The progress report by the current deputy, which I received on November 3, and by the assistant registrar of the adoption disclosure section on November 23, is as follows: they are on target to eliminate the backlog by December 2001, which is 20 months from April but 18 from the date they said they were going to start the clock going. All 24.5 staff have been hired and formal training has been completed. The waiting list is down. In February 1998 they had 16,783 requests for disclosure. That was reduced to 15,000, and to 11,300 in December 1999. By February of this year, which is when I began, they had 10,413 cases. In September they had 6,818, so it's now starting to drop at a more significant rate. In November, just two months later, they had 4,678.

The waiting period is down, and you're not going to be happy when you hear it, but it's not over either. I'm not a booster here, but we're just in the period. The previous records: in March 1999, the waiting period was 7.3

years, and that was the waiting period to start the investigation, which on average would then take about eight months, as I recall. It was 6.5 years in November 1999. When I started it was 6.25 years, a slight betterment, 6 years in March, 4.5 years as of November 3, and they're claiming that by November 23 the waiting list was 4 years.

It's 1,600 searches that have been completed in the first six months of the current fiscal year, 2000-01, compared to 2,100 completed in all of 1999-2000. I would expect that to accelerate by reason of their training now being completed and their staffing. They say they're still on target. I intend to monitor. Is that useful information?

**Ms Churley:** Yes; that's very useful.

**Mr Lewis:** But you're right; complaints are still going to come in.

**Ms Churley:** I'm pleased, even though I don't support this approach.

**Mr Lewis:** I know that.

**Ms Churley:** I'm pleased to see that the waiting list is being reduced. I'm still getting calls from very distressed people, and I presume you are too from time to time because the waiting list is so long.

Just briefly, on Highway 407, are you still getting complaints about that? I am, just recently. It all died down for a while and suddenly—there was a question in the Legislature the other day. I didn't raise it in the House, but I gave some complaints I had received to the minister, to try to deal with this.

**Mr Lewis:** The background to this is that that was the very first own motion that I'd done. I did it almost immediately after coming into office, with 407, which was a privatization issue but the government retained the enforcement power by denying licences in order to collect fees for the private partner. That's fine, but they didn't build an accountability system into it and they didn't do a proper appeal process. I ended the investigation when it was clear the ministry was acting on it very quickly and putting it together.

You're right, in the last very short time more complaints have come forward. I can say this to you: I am researching it at the moment.

**Ms Churley:** Yes. I was wondering if you knew why.

**Mr Lewis:** No, that's what we're looking at.

**Ms Churley:** I spoke to the minister and asked him if he could try to find out what was going on. He was very concerned about it too.

**Mr Lewis:** I'm sure he is. This is brand new. When we got it, it was evident right away. We're looking at it and, if necessary, and I don't know whether it will be necessary, it could be another own motion but I don't know—re-open the existing one is really what it is.

**Ms Churley:** Those are my questions. Thank you.

**The Chair:** Are there any other questions?

**Mr Lalonde:** I have a quick one. In the introduction in your paper you indicate in point 2 "increase the visibility of Ombudsman Ontario." Do you have any recommendation for that? We know there are very few people who know how to get to your office or when they should be going to the Ombudsman.



**Mr Lewis:** Yes, I do. I think the Ombudsman, myself, has to get out and about.

**Mr Lalonde:** I don't think it's enough.

**Mr Lewis:** No, it's not, but that's a fact, that it has to happen. It hasn't been a great deal up till now. We have a lot of staff but the Toronto area is a problem. We don't have enough staff available for Toronto. The people in our now very few regional offices do a lot of outreach. I appeared at the International Plowing Match this year, wearing my John Deere cap, because I just got myself a little tractor and I'm a member of the Ontario Federation of Agriculture. That's a very effective place for us to be.

If you've got ideas, Mr Lalonde, I'd be delighted to hear some. I mentioned some of the initiatives we intend to take.

**Mr Lalonde:** Even though you are appearing as Ombudsman of Ontario, that doesn't tell the people what you are there for.

**Mr Lewis:** No. We've got to be explicit. I agree.

**Mr Lalonde:** We need publicity in the paper to see what the services are that you could render to the population.

**Mr Lewis:** I can remember when Dan Hill was advertising, but he had money to advertise and I don't have money to advertise.

**Mr Lalonde:** I guess we'll have to use our householder to do it.

**Mr Lewis:** In your own constituency, I have to tell you, it's a two-member office. We lost one who went off to private work. We have just now been able to get a new one, who is transferring from another one of our offices. The office just moved, as a matter of fact, to almost across the road from Ms Boyer, I believe. I was just there a week ago. But you're right: it's a constant challenge.

**Mr Lalonde:** What I would ask from you—sorry, I don't want to keep it too long—if you could give us a list of all your responsibilities. We'll use this list and put it into our householder.

**Mr Lewis:** Oh, I see. You'd do that. All right. Thank you.

**The Chair:** Are there any other questions? If not, Mr Lewis and Ms Crean, thanks very much for coming. We'll look forward to your open house on December 13. I'm quite sure that those members who can attend will attend and, for those who can't, have a great Christmas and holiday season to both of you and all your staff. Please pass that on to your staff from the Legislative Assembly committee.

**Mr Lewis:** I shall. Thank you very much.

I know I always do this: could I say one more thing?

**The Chair:** Absolutely.

**Mr Lewis:** There are a number of issues coming to completion right now that, if they don't resolve, might find their way before you. As you know, that's a possibility. If I feel there is something that needs remedy and I can't get agreement, then I have to come and try to persuade you. I don't know how they're going to go, but they are at the stage where we're about to find out, and a couple of them are pretty interesting.

**The Chair:** I think that was the idea, that we meet fairly regularly, and anything we can assist on, we'd be more than pleased to.

**Mr Lewis:** You may or may not assist after you hear the argument.

**The Chair:** Maybe that's the wrong terminology—listen, then. Again, I appreciate it very much.

## BILINGUAL YOUTH PARLIAMENT

**The Chair:** The final thing on the agenda today is a letter that I assume all the members got. It's from M. Lalonde regarding the Bilingual Youth Parliament. Possibly, Monsieur Lalonde, you would like to make a little presentation on it or explain it, and then I'm quite sure there will be questions and we'll go from there.

**Mr Lalonde:** I will be as brief as possible.

In most of the French countries at the present time—I attended one in Yaoundé, Cameroon, this past July, and there will be one next July in Quebec City—there is a young Parliament. When we say “young Parliament,” the reason it's on the agenda is because we would like to have the permission of this committee that it would recommend to the Speaker of the House that the House could be utilized by those young students, and we will ask each riding to appoint a person. That would be using the Legislative Assembly for a maximum of four days during the summer period or at another time. But we have to have permission from this committee.

**The Chair:** I may be not reading it right. This program is facilitated by the Legislative Assembly. Are you suggesting that this committee would facilitate the program as such, or would that be done by the group from the French parliamentarians' association that was involved with that last week. That's the number one question. The other one is, is this a request to use the facility only, and would there be a cost factor that we would have to—

1650

**Mr Lalonde:** Not by this committee. It will be to use the facility only in the time—

**The Chair:** Only.

**Mr Lalonde:** Yes. The rest will be handled by our people. When I say our people, from the—

**The Chair:** Through the French parliamentarians' association or whatever you call it.

**Mr Lalonde:** Not necessarily.

**Ms Donna Bryce:** We need to clarify this paragraph.

**The Chair:** I guess that's what's causing problems, the second-to-last paragraph:

“My proposal was originally debated amongst the members.... My objective is to develop and offer a bilingual program at the assembly that is accessible to students from across the” country. “This initiative will be planned, co-ordinated and organized by the Legislative Assembly to include the involvement of members of all three parties.”

I think the concern that may appear is that all of it is going to be done by the Legislative Assembly committee,

"planned, co-ordinated and organized," by the staff, I guess, but that's not what's happening?

**Mr Lalonde:** When we say "the staff," the staff will be like Katch Koch.

**Ms Bryce:** Interparliamentary and public relations.

**The Chair:** But not the staff of the Legislative Assembly.

**Ms Bryce:** Yes, but they're the staff of—

**The Chair:** But only that area, though, of the—

**Ms Bryce:** Yes.

**Mr Lalonde:** We haven't come up with any details yet. At the present time, we've been working with Katch. People like Marcel Beaubien, Claudette and, I believe, Gilles Bisson, will be looking at how this is going to be implemented and then we will come back with that. At the present time, we need permission to use the facilities.

**The Chair:** So you're looking for approval in principle to use it subject to how it all goes together.

**Mr Lalonde:** At the present time, we have Upper Canada College, which is running one in the summertime that only lasts two days, I believe. This one—

*Interjections.*

**The Chair:** There is a policy that was set back in 1996.

**Ms Bryce:** It may interest the committee to know that this committee used to routinely get requests from colleges and universities to use the chamber. This committee in 1996 agreed that any requests would be approved as long as they met the criteria that were set out in the policy. That stands. That's on the books. I think the difference with this one is that with these model Parliaments that would be used through our Parliament, the

costs are incurred through the colleges and the universities. I suspect the difference with this one is that it would be a program run by the Legislative Assembly. The committee approving it in principle today means that a proposal would still have to go to the Board of Internal Economy to get funds to run the program. I guess that's why it's on the agenda today.

**Mr Lalonde:** We haven't set the age yet. The others are up to 18 years of age. We don't know yet. It's just to know if the facilities would be made available to operate this program.

**Ms Churley:** This has happened on many occasions. I fully support it in principle. I don't know if you were going to make a motion. Do you want to make a motion?

**The Chair:** Could somebody make a motion.

**Mr Lalonde:** I move that this committee support in principle the—mettre à la disposition. How do you say it?

**The Chair:** To support in principle the development of and offer a bilingual program for youth and use the facilities?

**Ms Bryce:** As outlined in Mr Lalonde's letter dated November 27.

**The Chair:** Is that OK? Any discussion? All in favour? We'll read that it was unanimous.

**Ms Churley:** We don't often get to do that.

**The Chair:** That's why I wanted it down there. I think that is the end of the agenda unless there's something else.

**Ms Churley:** No.

**The Chair:** Thank you. Meeting adjourned.

*The committee adjourned at 1655.*





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## Legislative Assembly of Ontario

First Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 12 February 2001

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Lundi 12 février 2001

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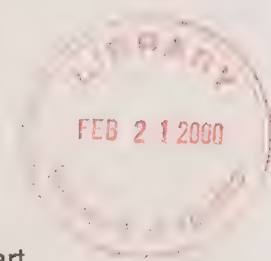
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## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Monday 12 February 2001

Lundi 12 février 2001

*The committee met at 1005 in room 151.*

## SUBCOMMITTEE REPORT

**The Chair (Mr R. Gary Stewart):** Ladies and gentlemen, we'll call to order the meeting and the hearings of the committee on the Legislative Assembly.

Can I have a motion regarding the subcommittee report, please? Mr Tascona, will you read that, please?

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** Yes. I'll move the subcommittee report and I'll read it.

Your subcommittee met on December 18, 2000, and has agreed to recommend the following:

(1) The subcommittee request the House to approve up to three days during the week of February 12, 2001, for the committee to consider private member's Bill 135, Public Hospitals Amendment Act (Patient Restraints).

(2) Notification of the hearings be placed on the Ontario Parliament channel asking any interested groups or individuals to contact the clerk of the committee. Should there be more witnesses than time slots, the clerk will contact the subcommittee for direction.

(3) The sponsor of the bill will be provided with an opportunity at the outset of the hearings to make an opening statement five to 10 minutes in length.

(4) Witnesses will be allocated 15-minute time slots for presentation and questions by the members, while expert witnesses will be allocated up to 30 minutes.

(5) Amendments to the bill will be distributed as available. Public hearings will be for two days. If possible, clause-by-clause will commence immediately following the hearings.

(6) The research officer will provide the members with information on medical research and jurisdictional comparisons.

**The Chair:** Debate?

**Mr Tascona:** I move approval.

**The Chair:** All in favour? Carried.

PUBLIC HOSPITALS AMENDMENT ACT  
(PATIENT RESTRAINTS), 2000LOI DE 2000 MODIFIANT  
LA LOI SUR LES HÔPITAUX PUBLICS  
(MESURES DE CONTENTION)

Consideration of Bill 135, An Act to amend the Public Hospitals Act to regulate the use of restraints that are not

part of medical treatment / *Projet de loi 135, Loi modifiant la Loi sur les hôpitaux publics pour réglementer l'utilisation de mesures de contention qui ne font pas partie d'un traitement médical.*

**The Chair:** We'll move to statements and presentations. The sponsor of the bill, Ms Lankin, will have the opportunity for 10 minutes.

## FRANCES LANKIN

**Ms Frances Lankin (Beaches-East York):** Thank you very much, Mr Chair. Let me begin by offering my heartfelt thanks to members of the Legislative Assembly from all three parties who came together in a majority to pass this private member's bill at second reading and to agree to refer it to committee for public deputation. We all know it's not often that a private member's bill makes it even this far, so for that I am grateful, and I am hopeful that today we're beginning a journey that will take this down a road so that, in some form, it becomes law.

I saw "in some form" because I think it is important to acknowledge that as private members we lack the resources for legislative drafting and the policy advice that one would have if they worked directly with a policy ministry, in this case the Ministry of Health.

I am grateful that the former Minister of Health had directed that the parliamentary assistant and staff work with me on this, to see if we can arrive at a bill that is acceptable to the government and the—*Failure of sound system*—health sector, who you will hear from over the course of the next two days, who have varying points of interest to draw to your attention with respect to the bill. I have not had a chance to speak to the new Minister of Health yet. That's something I will follow up on. Working with Mr Tascona, hopefully we will be able to continue on this same path.

In the next few days, you will hear very strong research-based evidence that restraint and a policy of use of restraint, which is so prevalent in the treatment—and I am using that word very loosely, because it's not really appropriate but it seems to be the way in which our system has developed its thinking—of the elderly and particularly elderly with dementia, is so prevalent and rampant and is so part of the culture in Canadian institutions that people from other jurisdictions find themselves, quite frankly, shocked. If you look at comparisons of the use of restraints in the UK, and even in



the United States, which has a higher use of restraints than the UK, you will find that even there it is much lower than in Canada.

We have a policy, a mindset, that says, "We should have institutional policies and we should train our health care professionals in a policy of least restraint." It's not often what you find in the front-line practice in public acute care hospitals. But it's interesting that we have accepted a cultural attitude of use of least restraint as opposed to a policy of being restraint-free, which is in fact the dominant culture in the United Kingdom. It is a growing body of opinion, with laws to back it up, in the United States. And in parts of Canada, like British Columbia, we are seeing that emerge as well.

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You will hear that in Ontario we do have laws with respect to the use of restraint that govern long-term-care facilities, nursing homes and homes for the aged; we do have laws that cover psychiatric hospitals or psychiatric units within acute care hospitals where they come under the Mental Health Act; and of course there are laws with respect to the restraint of prisoners in correctional facilities. However, in our public hospitals, in our acute care hospitals, on the regular wards of those hospitals, there is no law other than the common law and the criminal law which says you cannot confine someone against their will, and yet we do it every day.

You will hear evidence that people in the health care field truly do not like to use restraints and do so only when they believe it is in the best interest of the patient. That best interest is often defined as preventing the patient from falling or preventing the patient from pulling out intubation tubes or other medical devices that are attached to the patient. You will hear that described as preventing them from doing harm to themselves. Yet you will hear evidence from experts who will come forward who will tell you that all of the research that has been done blows a hole in those myths, that there is no difference in the incidence of falls between those who've been restrained and those who haven't. In fact, you will hear that in many cases the use of restraints leads to increased agitation, decreased cognitive ability and decreased motor abilities, and that in some research studies the rates of falls are shown to increase after periods of prolonged restraint. You will hear research that shows that restraints don't stop patients who are in periods of dementia from pulling out intubation tubes.

You have to wonder, then, why is it that we accept so readily that this is for the patient's own good when all the research shows differently? It's a cultural attitude that we have. It's not a question of ideology; it's a question of practice that has developed in our Canadian culture and our Canadian institutions. It is one that I find absolutely horrific, to think that it is acceptable to forcibly confine someone when there are alternatives. And the alternatives may cost money, I say to my friends, and I acknowledge that. They cost money in terms of things like beds that can be lowered to the floor and that are not up high so that people have a lower incidence of falling when

getting out of bed. It can cost money in terms of front-line staff who are there, who are able to be with a person who's in a state of agitation or a state of dementia.

There is a geriatrician, who will present before us, who said to me in discussion about this, "Think of an adult with dementia as someone who is mobile, can get around and is able to get in harm's way and harm himself, for example, but does not have the cognitive ability to be reasoned with and to be talked into staying still or staying in one location. Think about a two-year-old toddler who has the ability to get up, get around, be mobile, get into harm's way or harm himself and yet doesn't have the cognitive ability to listen to reason and to understand to stay in one area or to stay in bed. Would you ever consider that it is appropriate to restrain a two-year-old child—for a parent to tie a child up? No, we make the location what we call childproof. We make it safe, we make it age-appropriate and we follow the child around."

In the case of elderly patients with dementia, when they are placed on a surgical ward in a hospital which is not an age-appropriate setting, the front-line staff are left with a huge challenge of how to provide appropriate care for that individual. All too often what has happened is that in the absence of age-appropriate mechanisms, in the absence of restraint-free policies, in the absence of protocol for fall management or protocol for wandering patients, you see the individual tied up. It is not acceptable I think is the bottom line.

Now, I think everyone who comes forward, even those who disagree with the legislation, will tell you that they agree with the intent of the legislation. The job for us is to understand whether or not this will ever be an issue that is addressed unless we as legislators put at the base, the foundation, the rights of the individual and enshrine those in law.

There have been many, many coroners' inquests, there have been many coroners' geriatric committee reports, all of which talk about the elements of the need for physician orders, for frequent monitoring, for restraints not to be used as a method of convenience to staff or as a method of punishment or whatever. There are very few circumstances in which experts and the coroners and others find that the use of restraints is in fact appropriate, and yet that's not our experience day to day in hospitals. We have the hospital association and others who are working on updating their policies, working on major educational initiatives. That's terrific but, again, we've had these policies in place for years and yet the practice hasn't changed.

The nurses will come forward and tell you that the RNAO is prepared to develop best-practice standards, and we're hoping the Ministry of Health will fund that study. That's terrific and will help a lot. But again, there have been best practices and there have been policies in place for years and that hasn't affected the front-line exercise of this mechanism for patient control, because that's what it's become: a way to control patients.



The bill in and of itself that we started off with here is not perfect. Of course, there are many areas where I think we can debate the actual wording, the actual provisions. Should it be 15-minute monitoring or should it be 20-minute monitoring? Should it be a physician's order and reorder after two hours or after four hours? What are the connections between substitute decision-maker and the Health Care Consent Act—very complicated relationships. Does this bill meet that test? Do we need to import language from the Mental Health Act that says right up front that nothing in this bill authorizes the use of restraints, so that it's not misunderstood that this is a bill about how to restrain? Should we tackle the very thorny issue of including in this bill the use of chemical restraints?

As you will remember, in my own personal story, which led to this bill, my mother was not only physically restrained. As a result of the position she was restrained in and the pain, she was given Demerol; as a result of the agitation, she was given Ativan; and as a result of those two drugs and her cognitive impairment and her, then, onset of hallucinations, she was given Haldol, an anti-psychotic. That's chemical restraint. It's as devastating as physical restraint. I've chosen not to address that upfront in this bill because there is much I don't know as a lay-person about medical prescribing versus the prescribing of drugs as a restraint, treatment versus restraint. Perhaps this committee believes we should look into that.

What I'm hoping will happen over the next two days is that as a committee we are convinced that we need to have regulation in law affecting our public acute care hospitals, and from there that we perhaps adjourn the deliberations for this committee so that I'm able to work with the parliamentary assistant and the Ministry of Health on amendments that would be appropriate based on what we've heard and based on the ministry's policy advice, and that we are able to come back to committee, when the Legislative Assembly reconvenes, with appropriate amendments that reflect what you've heard and that allow us to move to a new day in Ontario where we collectively express that it's not just least restraint we're looking for; it is a restraint-free, as much as possible, world that gives respect and dignity to our elders and moves us in line with other jurisdictions that are beginning to go in that direction as well.

Mr Chair, thank you. I appreciate the opportunity to provide some opening comments to the committee.

#### ONTARIO PSYCHOGERIATRIC ASSOCIATION

**The Chair:** We'll move, then, to the delegations. The first one is the Ontario PsychoGeriatric Association. If you would come forward and introduce yourselves. You have 30 minutes, either in full presentation and/or questions. The questions will start with the official opposition if there is time left.

**Mrs Sandra Papatello (Windsor West):** May I ask one question through the Chair, perhaps directed to Mr

Tascona, and that's the position he's taking on behalf of the staff of the Ministry of Health and the minister, if there are comments that might come forward before or after, sometimes through these proceedings, about the current position on this issue of the government.

**Mr Tascona:** This is a private member's bill. The subcommittee has met in terms of what the procedure would be in terms of an opening statement by Ms Lankin, and we're here to listen in terms of her bill and the basic process. She has been meeting with the ministry, but there's not going to be any ministry staff here and there's not going to be any ministry position taken. We're here to listen.

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**The Chair:** To the delegation, welcome. If you would identify yourselves, and, as I said, you have 30 minutes.

**Dr Janice Lessard:** Good morning. This is Mrs Margaret Ringland, who is the president of the Ontario PsychoGeriatric Association. I am Dr Janice Lessard. I will be presenting the viewpoint of the Ontario PsychoGeriatric Association, and I thank you very much for the opportunity to do so. At the conclusion of this, with your permission, I would like to switch hats and then present what I believe has been called an expert opinion.

First of all, the Ontario PsychoGeriatric Association is a voluntary, interdisciplinary, province-wide association which for 26 years has been dedicated to enhancing the quality of life of the elderly. It brings together professionals, seniors and students who are interested in psychogeriatrics and all aspects of the well-being of the aged.

The OPGA is committed to advocating for appropriate health care delivery for individuals with cognitive and behavioural problems. We support education for care providers so they are able to deliver high-quality care and services to those who are entrusted to us.

We are here today to lend our support for Bill 135, An Act to amend the Public Hospitals Act to regulate the use of restraints that are not part of medical treatment. We believe this legislation is necessary to support the initiation of and compliance with restraint use policies and procedures in every hospital in the interest of protecting patient rights. The legislation will supplement and reinforce efforts to educate hospital staff and the public regarding an individual's right to be cared for in a dignified and respectful manner. Specifically, the legislation will ensure that new learning through educational initiatives becomes translated into improved and lasting practice behaviours related to restraint use.

The focus of our remarks to you today is the patient. We recognize that restraint use is a complex and multifaceted clinical issue, and admittedly will refrain from comment on the location in which care is provided and on specific work-life issues of various health care providers. Rather, our attention is to the individual rights to freedom from potential abuse and respect for dignity and autonomy.



The realities are this: the vast majority of people being restrained in hospitals are those people exhibiting confusion, the majority of whom are the frail elderly. Many illustrations have been provided to you in the discussion surrounding the first reading of the bill. Therefore, we do not feel the need to add to these except to say they are all very real. They do happen and they need to be addressed. We do, however, want you to consider this legislation on the basis of facts and information related to restraints, their impact, the rationale for reducing their use, and the alternatives to restraints. A few of these facts are these:

Restraint use in North America is more prevalent than in any other developed part of the world.

Many myths exist regarding restraints as a means to preventing falls and wandering behaviour.

Restraints rarely prevent harm to patients or staff.

No studies have demonstrated their efficacy in any setting.

Many studies have demonstrated the negative, adverse effects of restraints.

There are many effective alternatives to restraints.

Education of staff, patients and family members regarding alternatives to restraints is effective. However, education alone does not produce lasting change-in-practice behaviours, particularly in relation to such a value-laden and deeply entrenched practice issue like the application of restraints.

In the copies that have been provided to you, you will notice that there are some footnotes, references, 20 of them. I would like to add that in Ms Lankin's very on-target summary, none of which was opinion—they were all facts, and the literature supports every statement that Ms Lankin has made.

Based on these facts, it is our perspective that there is a place for legislation to set and reinforce parameters related to restraint use. Precedent exists already in the legislation that applies to long-term-care facilities. There are three of them: the Homes for the Aged and Rest Homes Act, the Nursing Homes Act and the Charitable Institutions Act. Where educational initiatives alone have failed, adding the strength of legislated mandates has resulted in practice change. Safeguards that respect human rights should not be left solely to the discretion of individual health professional organizations, individual hospitals nor hospital associations. Legislation provides the anchor for hospital policies and professional standards and helps sustain change. It provides professionals with a reference in developing, implementing and, more important, monitoring and complying with least-restraint policies and procedures.

We do not wish to minimize the complexity involved in moving to a least-restraint practice. While we believe legislation is necessary, we also know that it is not enough on its own. This legislation must be seen to support initiatives related to education and research and to provide for reasonable adherence to least-restraint policies.

Education is needed regarding what physical restraints do not do, as well as the cascade of harm that they precipitate. More important, hospital staff must be educated about the many alternative solutions that have already been studied and put into practice in many other jurisdictions. We are encouraged by the commitment of the Ontario Hospital Association to provide some leadership here. We emphasize that the focus should remain on the needs of the recipients of care and not on the needs of the providers of care. Research into effective and less harmful interventions in Ontario hospitals needs to be integral to the solutions.

Finally, to determine the degree to which hospitals are restraint-free environments, ongoing monitoring of physical restraint use is required. This monitoring could be tied to the Canadian Council on Health Services Accreditation program, with the use of physical restraints applied as a quality indicator, as has been done in the long-term-care facility sector. The Ministry of Health could, at least for the interim, consider requiring reporting on the use of physical restraints. Hospital report cards and patient satisfaction surveys that are currently being introduced to hospitals could be practical vehicles for evaluation and quality improvements in this area.

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Specifically regarding the legislation, we have the following recommendations:

(1) We urge the government to enact this legislation.

(2) We urge the government to support professional and public education in co-operation with care provider associations and experts in the field of restraint reduction and gerontology.

(3) We ask the government to fund research on alternatives to restraints.

(4) We urge the government to establish mechanisms to support hospitals in complying with these new provisions of the hospital act and to require public reporting.

Our specific recommendations related to this bill: since our focus here today is not on the validity of the clinical interventions or how they are to be accomplished, we have only three specific suggestions to make with regard to the content of Bill 135.

Our first addition relates to embedding a basic patient right into this new provision, similar to the resident right in the three pieces of legislation that apply to long-term-care facilities.

(5) Specifically, recommendation 5 is that the following statement be added to the bill: "The patient who is being considered for restraints has the right to be fully informed about the procedures and the consequences of receiving or refusing restraints."

Our second amendment addition relates to the definition of "restraint" and the term "medical treatment." These definitions can be quite non-specific. We believe that more comprehensive and universal definitions are needed to prevent ambiguity and room for interpretation.



(6) To this end, we recommend that the legislative amendment allow for definitions to be addressed in the regulations and policies governing public hospitals.

Our final addition relates to the need for ongoing accountability for the implementation of this new provision.

(7) Recommendation 7, therefore, is: we recommend that the legislation define a framework for accountability for the implementation of this new provision.

In conclusion, the Ontario PsychoGeriatric Association urges all parties to support the amendment to the Public Hospitals Act as proposed in Bill 135. It is essential that public policy reflect the values of its society and acts to entrench citizen human rights into our public services and programs. The vulnerable of our province will be well served by this legislation.

We thank you for this opportunity to present our perspectives to you.

**The Chair:** Thank you very much, Doctor. We've got about five minutes per caucus for questions, starting with the Liberal caucus.

**Mrs Pupatello:** Thanks so much for coming forward today with your presentation. Could I just refer you to your fifth recommendation, that is, "The patient who is being considered for restraints has the right to be fully informed about the procedures and the consequences of receiving or refusing restraints." Tell us your view of the reality of the day-to-day use of that. Are you talking about the custodian or someone who is going to be in charge of this patient; a family member, someone signing off? Typically, if it's perceived that the patient requires restraint, they are likely not in a position to give consent, to be informed, so what does that leave us with, pragmatically?

**Dr Lessard:** In this statement, we vacillated back and forth between should we say "the patient who is being considered for restraints," or should we add in "or the substitute decision-maker" in those situations where the patient is not competent to consent? Does that answer your question?

**Mrs Pupatello:** And I guess if you were to go further into the definition, because it is, I think, the crux of the matter and you haven't been very specific in that other than recommending that the definition needs to prevent ambiguity or room for interpretation, if you go to your sixth recommendation, in addressing it in regulations and policies governing public hospitals, what would that do to change what currently exists, or how would you define it if you could?

**Mrs Margaret Ringland:** If I can add, I think what we're speaking of here is that there is reference in other legislation or policies and regulations to definitions, such as the long-term-care acts, the various ones presented before, so we may want to reference those in terms of definition.

As far as medical treatment goes, and Dr Lessard will speak to this as well, it is our opinion that there are rarely incidences where medical treatment is in fact a restraint,

so we would urge caution in even considering a physical restraint to be a medical treatment.

**Mrs Pupatello:** Anything to add, Doctor?

**Dr Lessard:** No.

**Mrs Pupatello:** I guess specifically, you realize that the definitions are now in other acts. Are you comfortable with what those definitions are in other acts, or would you be proposing the definitions for "restraint" and "medical treatment"?

**Dr Lessard:** It's fairly standard in the literature what "physical restraints" refer to. It exists in other legislation, if fact, around the world. I think they're fairly accepted, and they start at having two bed rails up, all the way to jacketed restraints and tying both wrists and both ankles; it's called four-point restraint. So I think the definitions of physical restraint, if that's your question—

**Mrs Pupatello:** My question is that the second recommendation which you're making in your submission is that you believe you have to have a more comprehensive and universal definition, so what is it that you propose to go further than what is specifically in other acts currently? That is going to be the crux of the matter.

**Mrs Ringland:** I think what our recommendation is saying is that we suggest, first of all, that the legislation itself not necessarily embed the definitions, that you look at the regulations. But the second part is that, yes, we believe some of the other legislation, both long-term-care and mental health legislation, either through regulations or policy, defines quite clearly, and we would refer to that. We're just sort of putting a notice that we'd like to see something more than a broad understanding, because it isn't clearly understood. It has taken a long while for the long-term-care legislation to review and re-review and revise what the definitions were related to that, so rather than reinvent the wheel, we're just suggesting perhaps that's the way to go.

Regarding your question on the recommendation related to the patient rights statement that's in there, by not putting "substitute decision-maker," we're assuming that the Health Care Consent Act and the Substitute Decisions Act apply, so that we don't need to say "substitute decision-maker." In essence, that is required if someone is not capable of making the decisions.

**The Chair:** Thank you. Ms Lankin.

**Ms Lankin:** I appreciate both of you being here today. In the body of your submission, you make reference to the literature search and research search that has been done, and you have helpfully footnoted a number of the assertions that come from that research. I'd like to actually get it on the record, however, in a little bit more detail.

When I look at page 2, and you set out the realities in (a) through (g), I'm wondering if you could tell me from the literature research a bit more information. You say the use of restraints is more prevalent in Canada. Can you tell me about that? Can you tell me about studies around falls and around intubation tubes? Can you tell me about



whether there are effective alternatives, those sorts of things, in a bit more detail?

**Dr Lessard:** Yes, and I anticipate that you are going to hear more about the literature from other organizations and individuals who will be presenting.

The first thing you wanted to hear about was—

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**Ms Lankin:** Given that you've indicated you're aware of some of the other presentations that are coming forward and that there will be research information in that, you've done a literature search. You're also a practising geriatrician and have been involved in these issues. Tell me, are seniors tied up frequently in our hospitals? Does it help them to not fall? What's the outcome when they are tied up? I think committee members need to hear from an expert what the impact of restraints is.

**Dr Lessard:** In that regard can we, for the purposes of Hansard, complete the presentation from the Ontario PsychoGeriatric Association?

**Ms Lankin:** Actually, there's only this little bit of time left for questions from the two of us. So if you want to put on your expert's hat now, we can do that.

**Dr Lessard:** OK, here we go. In Ontario we have data showing that 33% of all adults in our acute care hospitals are physically restrained. Dr Molloy will likely tell you later that in one of his studies looking at people over age 75 in hospitals, 70% of those people are physically restrained.

The reasons for the restraints are usually these: fear of litigation—which of course holds no water, because in Canada there has never been a successfully litigated case against hospitals for not using restraints; however, there have been successful ones as a result of injuries when hospitals did use physical restraints. As you will hear from the Registered Nurses Association of Ontario presentation, their view is that frequently nurses need to tie somebody up so they can have an opportunity to attend another patient. The literature strongly shows that without exception there is no literature to say that using physical restraints keeps a patient safe. All of the literature says it either does nothing or it does harm.

**Ms Lankin:** A lot of people have told me that seniors are apt to fall and that this prevents them from falling, so it keeps them safe.

**Dr Lessard:** We have 20 years of scientific research that shows that not only do physical restraints not prevent falls, but they increase the incidence of falls. Of course, that makes sense. If you have someone tied in bed or tied in a chair for most of the day, they're not getting much opportunity for normal maintenance exercise. It's a cascade of events: the wasting away of muscle, the wasting away of bones, loss of balance mechanisms in the brain etc, so that when they finally get the opportunity to escape and they do stand up and take a step or two, they fall.

**Ms Lankin:** Dr Lessard, when you see a patient who has been restrained, what are the effects that you note on that patient? What's the most common experience you

have in the hospital with a patient you have seen restrained?

**Dr Lessard:** It depends on how long they've been in the restraints. The first few hours they are particularly angry and thrashing. They say they feel that they are in prison. They certainly feel that they have been assaulted. They are usually angry. A few days later they become more tearful. Because they're angry and noisy about it and trying to get untied, they are very vocal, and frequently you will hear in our hospitals, walking down a hallway, a plaintive, "Help, help, help." Of course that is annoying to care staff, so these people are then sedated and tied down, and this begins the cascade of terrible events that almost always lead to either nursing home placement or death.

There is a series of things that are happening in between. The patients become very depressed and withdrawn and not wanting to eat. The families get very distressed and react in a number of different ways. We start seeing physical problems. The drugs and the immobility themselves make these people incredibly incontinent and constipated because their abdomens are filled with excessive amounts of stool and gas presses on the bladder and now they are incontinent of urine.

The staff are having to put them in—a pejorative term—diapers or, more often and even worse, they stick plastic Foley catheter tubes into their bladders, of which 100% become infected within six days. Now that they have these Foley catheters in and they spike a fever, then the next knee-jerk reaction is to give these people antibiotics. Now that they have their antibiotics, they get antibiotic-related diarrhea. Of course, this diarrhea is caused by bacteria that we don't have treatment for: our famous VRE, vancomycin-resistant, methycillin-resistant and other bacteria. So now we have to isolate these people in their rooms.

**The Chair:** I'm going to have to cut you off, Doctor, and move on to the next caucus. Thank you. Government caucus.

**Mr Jerry J. Ouellette (Oshawa):** A couple of quick points: first of all, I'm undecided as to which way to go with the legislation. I want to deal first of all with the realities. On your page 2, (a) says, "Restraint use in North America is more prevalent than in other developed parts of the world." I want to make sure we're comparing apples to apples here. Ms Lankin mentioned the United States and England. Are we looking at the same numbers, figures and demographics and the same numbers of individuals in health care, or are we seeing more because we're providing more care?

**Dr Lessard:** No. In fact, it's biased against us. For example, the UK has had a population of 18% over age 65 since World War II. We are now at 12%, so they have a much larger senior population.

When we're referring to physical restraints, we are today trying to find ways to stop tying down 85-year-old, frail little women in four-point restraints. That's what we're trying to accomplish. When we're talking in the UK, that's not what we're talking about. We're talking



about bed side rails. For example, the frequency of using bed side rails in the general medical population in Ireland is 16%. In England, the frequency of using two bed rails is 6%. We have not done a study in North America looking at bed rails, they are so accepted in the system here, but most of us would estimate that the use of two bed rails approaches 100%. Ireland is very upset that they're using it 60% of the time because there is literature showing no benefit to the use of two bed rails and similar harm.

**Mr Ouellette:** What I was trying to get there was, are we having the same individuals in the same health care system at the same age, or are we having people go into the system here and providing a service that they're not providing in England?

**Dr Lessard:** No. On the contrary; the opposite is true. Their services for seniors are much more developed than ours in Canada. First of all, they are more community-based, and ours are acute hospital institutional-based.

**Mr Ouellette:** So they would provide more care at home?

**Dr Lessard:** Absolutely.

**Mr Ouellette:** So they'd have more individuals in the home care setting?

**Dr Lessard:** Yes.

**Mr Ouellette:** The other part is, one of the individuals I spoke with was my sister. She works in the health care providing service.

**Dr Lessard:** How nice.

**Mr Ouellette:** I need you to respond to this because, when I first mentioned this, her response was, "Oh, great. Finally they're going to do something about these people, and I'm sick and tired of being beaten up all the time." Her response kind of threw me because it was counter to what we're talking about. Then I went on to explain it a bit more. The comment that came forward was that part of the problem is that individuals such as she are in there providing the service for those individuals on a daily basis, and then doctors come in and they don't see them for very long. So when doctors come in, they get all the gravy parts, the nice parts, where the care providers actually in there eight hours a day, on that ward dealing with the people on a regular basis, are the ones who are, according to her, being beaten up on a regular basis. Are you seeing that or can you explain that or respond to that?

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**Dr Lessard:** Yes, I'd love to. Certainly the non-medical staff, particularly the nursing staff, are located on a single floor and don't move for eight hours, whereas the physicians have the ability to leave the scene. The nurses, however, seldom have the same patients more than two days in a row in an acute care hospital, so the nurses never get to know Mr Jones very well because they're being moved around, whereas the physicians know them because they've admitted them and they follow them through their entire hospital stay.

The issue of physical aggression: I suggest to you that the majority are the elderly, and the majority of the

elderly are women, and I'd like to ask you to imagine how much defence one needs from an 85-year-old frail woman. Not much. However, it is certainly true that nurses are being beaten up in acute care hospitals. What many of the hospitals have done is institute crisis intervention education, because the principles are the same whether it's a drunk 21-year-old in the emergency department or a demented gentleman. What I'm trying to say is that there are already effective substitutes for tying people down. Tying people down does not make them any more compliant; it makes them less so. Yes, they're swinging, but often they're swinging because they are being compelled to do something that is fitting into the routines of the nurses for that shift, and the patient doesn't want to and is not given alternatives. I think you are going to see a lot better things happening in British Columbia, where they have started to institute age-appropriate care which, as Ms Lankin was referring to, like pediatrics—if you had children in an adult setting, you can imagine that things wouldn't go well and a lot of nurses would get their shins kicked frequently. If one has an elder-friendly environment, one avoids creating these behavioural crises in the first place.

**The Chair:** I think we're going to call the end of that. Doctor and Mrs Ringland, thank you for attending and thank you for your presentation. We appreciate it very much.

**Mrs Ringland:** May I make one summary comment?

**The Chair:** Very quickly.

**Mrs Ringland:** I just want to add that there's no question that we're sympathetic to the degree to which nurses receive education and support for implementing policies and interactions that prevent abuse of the elderly, and therefore prevent abuse of the nurse. I'm just raising that because I think it's clearly important that we help people find interventions that are more effective, that work particularly to the benefit of the patient but also are effective for nurses to implement and prevent any kind of injury to them as well.

**The Chair:** Good. Thank you very much. I appreciate it.

**Dr Lessard:** Mr Chairman, may I give these to Donna Bryce?

**The Chair:** Yes. The clerk will take them for you.

#### ADVOCACY CENTRE FOR THE ELDERLY

**The Chair:** The next presenters are the Advocacy Centre for the Elderly, if you would come forward and identify yourselves. Again, you have 15 minutes, either in total presentation and/or questions. We will rotate the questions, starting with the NDP caucus. Welcome.

**Ms Jane Meadus:** Good morning, Mr Chair and honourable members. I'd like to thank you for the opportunity to present to you this morning.

**The Chair:** Do you want to identify yourselves?

**Ms Meadus:** My name is Jane Meadus, and I am a lawyer with the Advocacy Centre for the Elderly, a legal clinic for low-income seniors here in Toronto. I'm



accompanied today by George Monticone, also a lawyer at the Advocacy Centre for the Elderly, who prepared the written submissions you have before you this morning.

I would also like to acknowledge the presence of Lana Kerzner, who is seated in the front row, a lawyer with the Advocacy Resource Centre for the Handicapped who assisted us in the preparation of our submissions. I understand that ARCH has provided a letter to this committee in support of our submission.

As the institutional advocate at ACE, it's my job to represent clients in hospitals and long-term-care facilities who are having difficulties because they are in one of those places. One of the frequent complaints is that the patient is being restrained against their will. It is from my experience representing these clients that I am appearing before you today. I'd like to share with you a scenario which occurs all too frequently. For reasons of solicitor-client confidentiality, this is an amalgamation of a number of cases which I've had; however, the details are all too true.

Picture this scenario. Mrs Elias is an 80-year-old widow with one daughter. She resides in Scarborough in a home she shared with her husband for over 50 years. Her daughter lives in Mississauga with her husband and three young children. Over the years, Mrs Elias's health has deteriorated. She suffers from arthritis and a heart condition, which has meant that she cannot get out as much as she used to. She uses a walker to get around her small bungalow. She relies on home care services to assist her around the house and to get her shopping done. Her daughter, who holds the continuing power of attorney for property, does her banking for her. When she needs further assistance, she calls her daughter. Unfortunately, her daughter is not always available to assist her. Most of her friends are now deceased, and she no longer knows her neighbours well. She has little contact with anyone other than home care workers, her daughter and her family doctor, as she can no longer get out to participate in community activities. Her English is poor.

Mrs Elias has a dizzy spell and falls at home. She is able to call 911 and is taken to hospital by ambulance. This is the second time this has occurred. Once at the hospital, she is seen by the doctor, who admits her for observation to determine what has caused the dizzy spell. After a week she is medically cleared. However, she is advised that she's not allowed to leave the hospital. She is left in bed with the side rails up and cannot get them down to get out of bed. When she asks to get out, they tell her she must stay in bed unless accompanied by a staff member or her daughter. She asks for her walker and is told the same thing.

Mrs Elias meets with the social worker, who tells her she is not allowed to go home. She insists that a taxi be called and that she be assisted in getting out of bed, dressed and allowed to leave. She is told that she cannot. On the one occasion that she attempts to leave, she is returned to her room by security guards. Mrs Elias is told that she has to move to a retirement home. She refuses. The social worker tells her she has no choice, that the

doctor has said she cannot go home because she has been brought to hospital twice for falls. The social worker tells her that her daughter has agreed to this. Mrs Elias tells the social worker that she understands that she falls and is willing to get further aids at home such as grab bars and an alarm system to assist her. She understands that she may fall again and could be hurt, but this is a risk she is willing to take. She is adamant that she return to her home where she is comfortable.

Mrs Elias speaks to her daughter, who tells her that she's tired of all the calls from her mother for assistance and that she has a family of her own and cannot continue to do this. Mrs Elias states that she will manage on her own if her daughter won't help her. But her daughter says that doesn't matter; she's going to a retirement home the next day. The daughter tells her that she will sell her mother's home and pay for the retirement home out of that money plus her mother's pension. She tells her mother that she's doing this for her own good.

Mrs Elias becomes very upset following this telephone conversation and demands to be allowed to leave. When she is told no, she begins to yell at the nurse, telling her they have no right to keep her there and that she is an adult and can do what she likes. She begins to attempt to get out of bed over the rails. The nurse contacts the doctor on call, explains the situation and indicates that Mrs Elias has become extremely agitated. The doctor orders that Haldol be administered and indicates that Haldol should be administered again the next morning before Mrs Elias is taken by ambulance to the retirement home so that she won't act up on the way.

The nurse and several other staff members enter Mrs Elias's room and restrain her while she is injected with Haldol.

**1100**

The following day, Mrs Elias is frightened. When the nurse comes in and tells her she must have another injection, she complies as she is afraid of what will happen if she does not. The ambulance attendant arrives. She again states she wants to go home and not to a retirement home, but they ignore her and place her on a stretcher and she is taken to the retirement home against her will.

This is based on true stories I have seen in my office and people I have represented. The position of the Advocacy Centre for the Elderly is that in Canadian society we have no authority to restrain or detain someone except under the common law or by statute. Under the common law, restraint can occur in emergency situations where there is an immediate risk of harm to self or others unless the restraint occurs. An example of authority by statute is under the Mental Health Act, where someone can be detained and restrained after being an involuntary patient.

It is my understanding that some of those in opposition to this bill—for example, the Ontario Hospital Association, as cited in Hansard on November 23—have indicated we have no need for this type of legislation and that it should be dealt with by way of hospital policy.



With respect, I must disagree. The ability to detain and restrain is not within the purview of hospital policy, nor should it be. To detain or restrain a patient is a serious restriction on their liberty, something which requires more than a hospital board passing a policy. It is more than simply a clinical decision that professionals can make.

Section 7 of the Charter of Rights and Freedoms guarantees that a person has the right to life, liberty and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Section 9 states that everyone has the right not to be arbitrarily detained or imprisoned. And section 15 states that every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and in particular without discrimination based on race, nationality or ethnic origin, colour, religion, sex, age or mental or physical disability. This means you cannot simply detain someone because they are old and ill, which is what is occurring today.

It must be made clear that this piece of legislation before us does not provide authorization for the use of restraints. What it does is set out conditions as to how they can be used when they're lawful. It is important that a section be added to the bill to state this. In the paper you have before you, we have six recommendations we would like to make with respect to this bill, and urge you to carefully consider them in your deliberations as ways of strengthening the bill to assist these vulnerable people.

Finally, we commend Ms Lankin for bringing this important issue to the attention of the Legislature and the public at large. We believe that in sharing her story she has highlighted the difficulties others encounter with respect to restraints in the health system. If Ms Lankin, a well-known MPP, former Minister of Health and outspoken advocate, could not prevent her mother from being restrained under the existing system, we would like you to consider what is happening to vulnerable people who have no advocates to assist them. We also commend the members of this committee as well as the members of the Legislature who support this bill and recognize its importance to vulnerable people.

**The Chair:** Thank you very much. We have about six minutes, so about one question per caucus.

**Ms Lankin:** I appreciate the recommendations you have set out. We've had an opportunity in advance to discuss many of them, and you know I am supportive of the recommendations you are making; I see them as strengthening the bill.

I guess I want to ask you, then, in your experience advocating on behalf of the clients you have represented, have you experienced or represented clients who have had this experience of restraint in public hospitals? As you know, there are still problems with legislation that governs mental hospitals, under the Mental Health Act, or long-term-care facilities. But we have no regulations in place in the Public Hospitals Act. Can you see a differential experience of your clients in those sectors,

and do we therefore need something that covers public hospitals as well as these other sectors?

**Ms Meadus:** I'll leave aside the mental health sector, because I think that is a bit of a different animal, although I think the sections in here talking about the number of minutes etc should go into the Mental Health Act as regulations, because they are not there and I think there is a difference between various facilities. So it would be nice to have a set piece of regulations that say what happens.

With respect to hospitals and long-term-care facilities, I do have a lot of problems with hospitals. I represent a lot of clients on a number of occasions, and even when I go in on other things, I find my clients restrained; I see other people being restrained. Because there is no legislation, the hospitals often feel, "We can do whatever we want." They're not getting consent from anyone.

There's a question of whether some of these things are treatment. If they're treatment, they should be getting consent under the Health Care Consent Act; for example, for medication. That is not occurring. That's one of the biggest complaints I get: "Dad's on Haldol and we don't want him on it." I say, "Who's consenting?" and they say, "The doctor." Well, the doctor can't consent. So it's a big problem. You go in and say, "We don't want them restrained," or what have you, and they say, "Too bad; that's what we're doing." The families often have very good reasons not to restrain. I certainly have clients who have been injured by restraints—legs caught in bars of side rails, getting caught between side rails, falling out over side rails. There have been people who have been strangled in wheelchairs with cords. I go in all the time and see people slipping down underneath and we have to call somebody to get them out.

**The Chair:** We'll go to the government caucus.

**Mr Wayne Wettlaufer (Kitchener Centre):** Good morning and thank you for your submission.

Under your recommendation 6, you state that only physicians and nurses who are regulated under the Regulated Health Professions Act should be authorized to apply restraints according to the conditions set out in subsection (7) of Bill 135. The College of Nurses has made a submission to this committee. The executive director, Anne Coghlan, has said, "In contrast to the proposed legislation's focus on the physician as the prime decision-maker relating to the use of restraints, we firmly believe that nurses are in the best position to determine both appropriate definitions of 'restraint' and 'safe restraint application' for their specific practice settings. It is the nurse who will implement the application of restraints."

Also, Jackie Choiniere, the director of policy, practice and research of the RNAO, the Registered Nurses Association of Ontario, has said, "In our view, the most effective way to ensure that the least-restraint approach is systematically and effectively applied in all settings across the province is by ensuring that the policy is well grounded in evidence. The best-practice guidelines project, funded by MOHLTC, the Ministry of Health and



Long-Term Care, and managed by the RNAO, is an excellent vehicle to make this happen."

Do you see that what you're recommending is coinciding with what the college and the RNAO are saying?

**Ms Meadus:** I think so. The nurses certainly do see the day-to-day practice of what's happening, so it may be feasible that they're the people who should be determining whether or not restraints should be used. I don't know that it's something we've really addressed specifically. We were looking at it in a somewhat different way. We don't want, for example, the janitor down the hall to take the training and be able to do it. We were trying to limit it and didn't want to just put in "regulated health professions," because that's too broad, so we had brought it down to just the two groups. I don't think we've really addressed the issues they were discussing.

**The Chair:** To the Liberal caucus.

**Mr Jean-Marc Lalonde (Glengarry-Prescott-Russell):** Thank you for your submission. I have a few questions.

Your recommendation 6, to me, is very vague at the present time. I do visit home care people quite often, and we know for the home care services availability that we have at the present time, with the reduction in funding, we'll see more and more of those happening similar to Mrs Elias, because at times daughters or sons don't have the time to spend with their fathers and mothers.

Reading all the documentation I have read over the weekend, I could see that probably there would be some recommendations to be made besides those in there. Do you think that if funding was made available to those nursing homes, especially, or the senior citizens' homes, with the home care services we could have kept Mrs Elias longer in her own home with the additional funding?

1110

**Ms Meadus:** I do believe that additional funding definitely would keep people at home. Very often the person just isn't getting enough assistance at home, which brings about these situations. I can actually tell you that in the situations I've had where I get these calls, the person does end up going home and doing quite well and not ending up in hospital the next week. It's sometimes a matter of trying to get in more assistance; perhaps they didn't realize they could pay for some assistance. Although we would prefer home care to be unlimited, sometimes they're able to get in a friend or someone to assist them and they can do well at home. So increased funding, certainly in the home care setting, would go a long way to assist this.

**Mr Lalonde:** At the present time, at least once a month I visit a nursing home; I have nine in my riding. I could see more and more people being tied either to their wheelchairs or in bed. The rails that they have on the beds should be changed, because I fully agree that the ones we have on the beds in nursing homes at the present time should not be this type of rail.

**Mr George Monticone:** Mr Chair, I would like to make one closing comment, if I may.

**The Chair:** Yes, go ahead; short, if you will, please.

**Mr Monticone:** I would urge you to consider the question of the definition of "restraint," and when you do that, don't define restraints by reference to physical, chemical and environmental restraints and leave it at that. I think "restraint" should be defined fully. We've given you a possible definition here to consider. Please consider it seriously.

Restraints should be defined in terms of what they actually do to people, not in terms of physical, chemical and environmental, because that leaves a question as to what those things are. Give us a definition that people understand, which is that restraints limit people's movements and behaviour and they have no control over those things. That's what a restraint is. We would really urge you to consider that as a definition.

**The Chair:** Thank you very much, sir, and thank you for your presentation. We appreciate it.

#### ONTARIO COALITION OF SENIOR CITIZENS' ORGANIZATIONS

**The Chair:** The next group is the Ontario Coalition of Senior Citizens' Organizations. If you would come forward and make your presentation; identify yourself, if you would, sir. You have 15 minutes for a full presentation and/or questions, starting with the government caucus.

**Mr Don Wackley:** Good morning. I'm Don Wackley. I'm the co-chair of the Ontario Coalition of Senior Citizens' Organizations. You'll notice my brief is very brief, because I don't think there are a whole lot of things to be said except, "Do it." I'll read the brief to you.

I come with no degree except Parkdale 101 and as someone who has had a major heart attack and four months of shingles and almost feels like a resident at St Joseph's Hospital. Being adopted, I have no history, so they are searching my body to find out why I would have shingles. So I see the hospital as a person, as a patient, as opposed to a doctor, a lawyer, a professional. I'll put on my glasses.

OCSCO is a provincial organization and a registered charity. Our mission is to improve the quality of life for Ontario's seniors. Our members include over 130 seniors' organizations representing 500,000 seniors from across Ontario.

Although we represent mainly organizations, we also welcome individual members. OCSCO is community-based and not-for-profit and represents the following groups: seniors, disabled, trade unions, natives, health and recreation groups, retirees and women's organizations. We are involved in education, policy development, alliances, information, referral and counselling, outreach, specialized programs and research.

We support the Public Hospitals Amendment Act on three basic counts.



We feel there is discrimination. We feel strongly that acute care hospital patients are being discriminated against. They do not have similar protection as residents in Ontario's nursing homes, charitable institutions, homes for the aged and rest homes. Why are these acute care patients not covered by the same bill of rights? Clients needing acute care are every bit as deserving of respect, freedom of choice and dignity as those in other institutions. We hope the Public Hospitals Amendment Act, 2000, will correct this injustice.

The current cuts in the health care field should not be allowed to affect the quality of care given acute care patients. The idea of restraining patients because of staffing shortages is repugnant. US studies show that restraints, when used indiscriminately, have caused patient injury and even death. The more confused the patient, the more vigilant we should be in the quality of care we provide. Doing otherwise diminishes us all.

Basic human rights: I'm 70. As a senior, and all the seniors we represent, we are all too well aware that there, but for the grace of God, go I. Tomorrow I could be in that hospital and I could be under restraint.

OCSCO's mission is to improve the quality of life of seniors, and restraint is not saying anything much about life. When patients are restrained for long periods of every day, where is the quality? Surely motion-limiting controls such as over-medication, belts and bed rails cause deterioration of the patient's life. We cannot help but believe there are more humane solutions to the problems leading to the use of restraints. In many cases, with proper staff training and support, these problems can be solved while respecting the patient's dignity and basic human rights.

The Public Hospitals Amendment Act faces the whole issue of restraints with clarity and realism. It outlines cases where restraint can be used; that is, only when necessary to protect the patient, only when consent has been given and only on a physician's written order. The act offers further protection, such as limiting the time that restraints can be used. For these reasons, we fully support this act.

**The Chair:** Thank you, Mr Wackley. We've got about three minutes per caucus, starting with the government.

**Mr Raminder Gill (Bramalea-Gore-Malton-Springdale):** First of all, Mr Wackley, thank you very much for being here. We wish you well. Hopefully, you have overcome your physical—

**Mr Wackley:** I'm a good 70.

**Mr Gill:** Great. You look good.

A couple of things. In your submission, you mention under point 2, "the current cuts in the health care field." I think the reality is a little different. I'm not trying to—you know, we need the maximum amount we are spending now, \$22 billion. I'm not going to get into the semantics of it, but the facts are that we're spending huge amounts of money. The pressure is now on health care in a different way, to try to control that maybe. Secondly, I'd just ask you what kind of restraints and under what conditions you would see that as valid treatment?

**Mr Wackley:** First of all, can I touch on the first part?

**Mr Gill:** By all means.

**Mr Wackley:** One of the things I do, when I'm not with my organization, is play piano in seven seniors' residences in Toronto. There are people now who can no longer come down to where the piano is. There are not enough physical bodies to bring them down, because they need help to come down there. I don't know how much money should be spent on health care. That's a whole other debate. Is some of it being wasted or whatever? Personally, in the simple things I do in health places, I see fewer and fewer staff. Therefore they cannot bring the people down to do a simple thing that might be more humane than being kept in their rooms, if they could come down and listen to someone play a piano.

What was the second question?

1120

**Mr Gill:** The second question was, do you see restraint as of any use, or are you totally against any kind of restraints?

**Mr Wackley:** No, obviously I think there must be times when someone needs to be restrained. But I look at hospitals and places where I am, and I'm not sure why the bars on the beds are metal. It seems to me that you could hurt yourself hitting against metal. I look at that as an ordinary person and not as an engineer, and wonder if there is not some way those could be padded so they would be less hurtful. It's been said before by other people, as I sat here and listened, that an 85-year-old person weighing 112 pounds cannot really be causing a whole lot of trouble to anyone else. There could be a gentler, kinder way to restrain that person. I'm not a legislator and I don't know how to write law. But as a person who goes in and sees things like that, I wonder: isn't there another way, isn't there a better way? The most frail people in our society should be treated with much more kindness than they sometimes are.

**Mrs Pupatello:** Thanks so much for speaking to us today. I find it of interest that our colleagues across the committee here would discuss the overall funding of the health system, always with the idea to get out the information that the government in fact is spending more money than ever before on health care. They make lots of these grand statements all the time. My biggest question for the government members, really, is what a terrible job they must be doing, and question that they must be asking their own chiefs of state what a mess they've made, considering they're spending so much more money on health care. It's amazing to me that most people believe our health care is in a much deteriorated state since they took over, and yet they're spending more money. What terrible managers we've got over there. So it is an interesting time to come to the table today to discuss a private member's bill regarding restraints.

With what I've heard over the course of the last almost six years, much of what is happening in institutional care directly relates to the funding available for help in these institutions: hospitals, long-term-care facilities etc. The nurses I've spoken with find there aren't enough of them



on the floor. They can't come back to the room as quickly as they'd like to. They're finding that the use of restraints is replacing the fact that we used to have people there to care for them on a much more regular basis. But because of the cuts to hospitals, which cannot be denied—and they may want to talk about overall funding in the Ministry of Health budget, but we have to specifically address that the cuts to these institutions have been severe and that the effect has been where most of the money goes in these institutions and that's for employees.

The lion's share of any budget is salaries to fund people to be there. The result of that funding not now being there like it was, which, I would say to the Conservative members, is inarguable—the money simply is not there like it was before—is that in place of that we now see the rise of the use of restraints. We can't get away from the funding discussion around implementation of this kind of legislation. It is going to have to address the need for funding in its implementation. They are so tied together that we have to have that discussion.

Just on that, I want to thank you for coming today—and if you have comments in the groups you represent as seniors. We know that by the time you can be a senior, you as a group are using the system more than younger folks, so what you have as an opinion frankly counts.

**Mr Wackley:** Can I just say that unless the money being spent is eventually spent for the patient and the caregiver, then in many ways it's not worth being spent at all. It's not mortar, it's not brick and it's not nice new paint. If the patient's and the caregiver's life is not made better, then it's got nothing to do with health.

**Ms Lankin:** There are a couple of things I'd like to put on the record in response to the points you raise. In particular, I want to start with the issue of discrimination, because I actually believe there is ageism in our health care system. Ms Pupatello talks about the lack of front-line nursing staff in acute care hospitals, and that exacerbating the use of restraints. In fact, it may be the reason more often given today for the use of restraints, but the use of restraints has been an age-old problem, and that's not intended to be a play on words. The reasons that used to be given were the safety of the patient, the liability of the hospital, and working conditions was another. So we have used restraints for a long time. The reasons we say we use them change, and now the reason we say we use them more frequently is because there aren't enough staff.

To implement an age-appropriate setting, you are going to require more staff, but there are other things that can be done. In New Westminster, BC, the Royal Columbian Hospital developed a non-restraint standard. They came at it from the other point of view. It was the nursing management/nursing team that was on the committee doing this. Some of the staff members objected to removal of the use of physical restraints, and they cited patient safety as well as staff liability and working conditions.

The committee looked at those and found that the research demonstrated that the restraints did not prevent falls and that people who were put in restraints suffered emotional, mental and physical deterioration; on liability, they found it didn't relieve hospitals or staff of their obligation to provide a reasonably safe environment; and on working conditions, they found that if they looked at the issue of acuity of patients and the physical layout of the unit and addressed alternatives, they could deal with the working conditions, the staffing level issues.

They developed policies of a corporate standard, integrating patient rights into the nursing care philosophy, and a restraint-use protocol, that it was absolutely a last resort—in the case of threats of severe violence or suicide, you can understand that—but specific conditions, which is what my bill sets out to do.

They also—and I thought this was great—brought in a falls management protocol. Staff identified someone who was at risk of falls when they were being admitted and they looked at alternatives to the use of restraints to minimize falls, like beds that are lower to the floor, as we have in our homes, for example.

They also brought in a wandering patient protocol. Patients who are mobile and confused or agitated are identified on admission as at risk and they wear house-coats with a unique pattern to make it easier for staff to identify them.

They make it age-appropriate. Surely what we seek to do here is to understand that our system is not age-appropriate, therefore there is ageism within the system and there are things we can do about it other than tying people up.

**Mr Wackley:** Yes, there is. There is ageism not only from the hospitals, but where we live and how they make us live, but that's a whole other story and we'll come and talk about that another day.

**The Chair:** Please come back and talk to us about that another day. Thank you very much for your presentation.

## ONTARIO HOSPITAL ASSOCIATION

**The Chair:** The next presenters are the Ontario Hospital Association. Would you come forward and identify your group. You have 15 minutes for presentation and/or questions. Welcome.

**Ms Hilary Short:** I'm Hilary Short, vice-president of policy and public affairs at the Ontario Hospital Association. With me is Mr Michel Bilodeau, who is president of SCO Health Services in Ottawa and the chair of OHA's newly constituted task force on the use of restraints in hospitals. Next to Michel is Elizabeth Carlton, who is a senior policy adviser with the Ontario Hospital Association.

The OHA, as most of you know, represents all of the hospitals in Ontario on issues such as this and provides a number of services to hospitals.

Let me begin by saying that the OHA certainly is very sympathetic to the motivation of the bill as raised by Bill 135, the Public Hospitals Amendment Act. We recognize



that the appropriate use of restraints in acute care settings is a very important and very complex issue. Certainly in the 26 years I've been associated with the OHA, it's one that's been front and centre on many occasions. We know how concerned our members are with the appropriate use of restraints in hospitals.

1130

Following discussions that our president had with Ms Lankin late last year, we did decide to revisit the whole issue of restraint. We had published in 1993 some guidelines which do govern the best practice of use of restraints, but we felt it was time, following the introduction of the bill, to take a whole new look at the issue, and so we reconstituted the task force under the chairmanship of Michel Bilodeau. That committee, which is still in its early stages, has indicated to us that regulating practices that are clinical in nature is not practical and would not achieve the goals that the legislation has. Rather, we need to take another look at current practices, work with patients and providers to research best practices, such as the one that Ms Lankin just alluded to, and launch new education initiatives in this field.

But we are going to look at the whole issue again, look at hospital practice in the province, get input from front-line caregivers with a view to revising our guidelines from 1993, or indeed do anything else that our task force of hospital experts recommends.

I'll now pass it over to Michel Bilodeau, the chair of this committee, for his very specific comments about the legislation.

**Mr Michel Bilodeau:** Thank you and good morning. I'd like to echo Hilary's comments, because this is indeed a very sensitive and complex issue and we are very sympathetic to the issues raised in Bill 135. I can say that in my own hospital, which is a chronic care and rehab hospital, we had an internal task force that worked for one year to develop our own internal policy of least restraint, so this is not something that we take lightly.

But this bill attempts to codify current policies of least restraint by strictly legislating how health care professionals should exercise their professional judgment. While we fully endorse the policy of least restraint, as you can see from the OHA's 1993 guidelines, we believe legislation would not be effective in achieving that goal. Legislation is not an appropriate or an effective method of addressing issues of a clinical nature. I could give as another example where we are very much in favour of substituting generic drugs for trademark drugs, but having a law to force physicians to do that would not bring very efficient results.

A legislative approach conflicts with the professional approach to clinical decision-making based on evidence and professional standards and the implementation of best practices. While legislation may have some place in ensuring the necessary lines of accountability and monitoring, it has no place in prescribing actual practices. As drafted, we think that Bill 135 is overly prescriptive and its spirit runs contrary to the discretion granted to health care professionals.

This encroachment on clinical practice will undermine the expertise and integrity of front-line staff. It runs counter to the idea of the unique needs of patients and conflicts with the prerequisites of multidisciplinary patient-focused care. It eliminates the opportunity for individual assessment and treatment by a team of health care professionals by placing all responsibility on the physicians. Further, in view of hospitals' concern in respect of liability and to protect against patient injury, it is possible that one of the unforeseen results of this legislation might be more widespread sedation of patients—that is, chemical in lieu of physical restraints—and the reluctance to admit patients who are at risk of requiring restraints. We are extremely concerned about these potential side effects of the legislation.

The OHA is also concerned that Bill 135 does not address a number of key issues. It places all responsibility on physicians, while assessing patients for the risk of injury to self or others and recommending the use of restraints is part of the nursing scope of practice.

The bill also does not include a provision for resolution of disputes between the care team and the patient or substitute decision-makers.

**Ms Short:** One further point. We've heard reference to the fact that the use of restraints is increasing. It's an important point, but the use of restraint in acute care hospitals is not currently documented or reported, so we don't really have information one way or the other as to whether it is increasing or it is not.

In chronic care hospitals—

**Mr Bilodeau:** We have figures for chronic care hospitals because in the last four years the government has mandated the use of a classification system called MDS RUG, and since then, we have to report all use of restraints for chronic care patients throughout the province whether they are in acute care or chronic care facilities. We know from these figures that the prevalence has declined from 29% in 1996-97 to 25% in 1998-99, and we'll soon get the results from 1999-2000. Then we can compare with others. We have no such information for acute care hospitals, so we really don't know what the prevalence is at this time.

**Ms Short:** In summary, we believe that the most effective route to achieving consumer- and patient-focused best practice is through guidelines, education and implementation of these best practices rather than through legislation. We have made it a priority for our association and our members to examine current practice, and we will be providing education based on what we learn. It is the opinion of the OHA and our task force at this point that the issue of appropriate use of restraints in acute care hospitals needs to be reviewed and that the matter of legislation should be deferred until the requisite fact-finding has been completed.

And with that, we'd be pleased to answer any of your questions.

**The Chair:** Thank you very much. We've got a couple of minutes per caucus, so I think we'll limit it to one question per caucus.



**Mrs Pupatello:** Thanks so much for your presentation.

Decades ago it used to be widely acknowledged that the use of lids on beds for psychiatric patients or people in sanatoriums was completely appropriate. That's how they would put them to bed at night—put a lid on the bed like a pot. That is wholly unacceptable today; we wouldn't think of doing that to animals.

I guess my point in saying that is that public opinion has certainly shifted widely toward the patient and I respect the comments that you've made with respect to how service is delivered within a hospital site. But if the service is really going to be patient focused and public opinion really has shifted significantly—you have commented on the use of restraint and the discussion around it, but you haven't commented on the practice that would lead up to requiring a restraint and that is all of the alternatives that ought to be in a discussion within a hospital site before restraint is used.

**Mr Bilodeau:** Certainly part of the work that we're trying to do with the task force I chair is to identify best practices throughout the various hospitals to find out why some hospitals would have a lower rate than others, because basically everybody endorses a policy of least restraint but some have a lower rate of restraint than the others. So you have to look at different types of population, but you also have to look at different types of education for the staff and different types of other tools that may be put at their disposal and how they actually emphasize that issue.

There is no easy answer to this problem. I was talking to Hilary before the presentation, saying in my own hospital, six years ago, we had a patient who died from falling from the bed where he was restrained, and obviously that was an element that prompted us to reduce drastically the use of restraint. Last week, however, we had a patient who fell and injured himself while being washed by a nurse. I was hearing people say, "Anybody can defend himself against a 112-pound lady." That patient had been insulting that black nurse with racial insults for 15 minutes and took a swing at her. She went back, crying, and the patient, who was not restrained, fell.

So it's not easy; it is not simple. If it were simple, we would have resolved it a long time ago. I think education, over time, and sharing our experience are the best things we can do. I don't have an easy solution.

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**The Chair:** Ms Lankin?

**Ms Lankin:** I'm going to use my time to make a few comments on the record in response to your presentation.

I appreciate the OHA's interest in this issue, the establishment of the task force and the work that you've invited me to be part of leading toward an educational conference or initiative. I know we are working in the same direction.

I must say I am not surprised that the OHA's position is to either not support or, in this case, defer—I am actually glad to hear the language is "defer"—consideration of legislation. I think I know that it actually

on of legislation. I think I know that it actually means not to support further regulation of public hospitals, because in my experience over the years, in the relationship I had with the OHA as Minister of Health, that has been a consistent position that the OHA has taken. I have told committee members this in legislative debates.

One of the examples that comes to my mind is the issue with respect to organ retrieval and referral and the education of hospital staff, to have a team in place to do the direct acts, of patients or of patients' families, and that was resisted in terms of a regulatory answer. The OHA said that it was sensitive, and the OHA said that they were developing new policies, and the OHA said that they would do further staff education, and it wasn't a simple issue, all of which was true. A number of years later, eight years later, we have now passed the legislation to put at the base of this and we'll work with the OHA to implement all of the other wonderful things.

I think the same is needed here and, if I may, in response to your brief, point out the reasons why I think the attitude just isn't going to get us there: you have indicated that restraint would rarely be a medical treatment. I agree. But you say that it's a means of facilitating medical treatment, either to prevent tubes from being dislodged, to prevent falls or reducing risk of additional injury. All the research says that all three of those statements are absolutely false, yet I know they are the attitudes that prevail; they are the beliefs that prevail.

In your written brief as well, in terms of getting consent to treatment, you say that's often impractical and that it could take several days or weeks of evaluation to determine capacity. You have to know capacity before you can put any treatment in place. If you don't think the person is capable, the doctor has to seek substitute decision approval. I find it extraordinary that that would be suggested.

You've indicated in your oral presentation that the lack of use of restraints will often lead to the use of chemical restraint, sedation. In fact, all the research shows that when you physically restrain someone, the agitation that's brought about automatically leads to a greater use of sedation.

All of what you have put forward I know are the commonly held beliefs on the front lines, but all the clinical research that has been done supports something different.

**The Chair:** Ms Lankin, I think if we could just give them a chance to respond and then move on, if that would be satisfactory.

**Ms Lankin:** I wasn't intending a response. I had one more point that I wanted to put on the record. I indicated that I wanted to make some comments in response to what had been said.

**The Chair:** Very quickly, if you would, please.

**Ms Lankin:** The last thing I wanted to say is that I agree with you that we don't have incidence rates for public hospitals, in terms of the use of restraints, and I think the commitment to start to do that is important.



One of the things I think we have to acknowledge is that, although a lot of policies in hospitals say it must be charted, it is in fact not being charted. It has become so routine that it's not being charted. Unless we get at that, we won't be able to do the kind of checking that the hospital report card might propose to do to monitor the use of restraints. That's a major piece that I hope you will look at on your task force, Mr Bilodeau. Thank you.

**The Chair:** The government caucus?

**Mr Tascona:** From what I've heard this morning, the policy you've adopted philosophically is a policy of least restraint, and that in terms of acute care hospitals there really is no evidence that's collected on the incidence of the use of restraints; yet in the chronic care hospitals it would appear that the incidence and the use of restraints are decreasing.

What I can take there is that there really is no evidence on an increase in the incidence and use of restraints. What I'd like to ask you is, in this area is there any relationship between the use of restraints or the incidence of restraints and the funding level a hospital receives?

**Mr Bilodeau:** There is certainly no relationship. Hospitals are funded on a global basis, which means that there's not even a relationship between the funding they get and the types of patients they treat.

**Mr Tascona:** So to bring it back one step, there really is no evidence out there that there is an increase in the incidence in terms of the use of restraints.

**Mr Bilodeau:** Not that I'm aware of. I think there is an increase in the awareness of what it means and certainly an increase in the awareness means there is a practice that has been there for a long time. Even though most people felt that it was not the right thing to do, it has continued. Now there is an increased awareness. Certainly, as I said earlier, in chronic care hospitals, chronic care units and acute hospitals we now have data as an incentive to reduce, because when you are compared to other hospitals, if you see that your rate is higher, you want to discover why. That brings you to look at what's going on and to reduce the use.

Certainly, if we can do the same thing in acute hospitals—and we do don't know what our recommendations at the end will be, but we now have the tool of hospital reports annually, and that's the type of thing where, for example, we could end up trying to find indicators that would be reported regularly that would tell hospitals how they fare compared to others, and it would be a strong incentive to improve what they do.

**Mr Tascona:** The issue here essentially, what you oppose, is that this is a clinical decision, an exercise of professional judgment in terms of using restraints, and you don't want that to be legislated.

**Mr Bilodeau:** We don't want it to be legislated and we also think it's not going to be efficient at the bedside when the actual caregivers are faced with the situation. We think, however, there's a major operation within the hospital world to provide incentives and means to people to reduce the use of restraints.

**The Chair:** Thank you, folks, for your presentation. We appreciate it very much.

#### CANADA'S ASSOCIATION FOR THE FIFTY-PLUS

**The Chair:** The final presentation before lunch is from Canada's Association for the Fifty-Plus, if you would come forward and make your presentation. Again, you have 15 minutes for a presentation and/or questions. We will be starting with the NDP caucus. If you would identify yourselves, please.

**Mr Bill Gleberzon:** My name is Bill Gleberzon. I am the associate executive director of CARP, Canada's Association for the Fifty-Plus. My colleague is Judy Cutler, who is the director of public relations and communications. We've handed out our formal brief, which I'll address, and Ms Cutler will add some comments when I'm finished.

We obviously want to thank you for the opportunity to present our brief on Bill 135. You can find out about CARP, which represents 236,000 members across Ontario. Our mandate is to express the concerns of 50-plus Canadians. Our mandate is to provide practical recommendations for the issues we raise. Therefore, we represent the non-professional patients and their families and consumers and bring that point of view to bear on the bill.

CARP recognizes that patients can become unruly and agitated and that hospital staff have a heavy and demanding workload. However, the use of restraints should be regarded as a last resort to be applied only after other alternatives have been exhausted. Although they're not part of Bill 135 or an issue that should be legislated, CARP represents that alternatives to the use of restraints should be identified. In the meantime, restraints that are used should be minimally uncomfortable, minimally humiliating, intrusive, traumatic or life-threatening. We refer you to a study done in 1998 which identified 142 patients in the United States who died of restraints during the previous decade.

1150

Our position on the bill is that we support it. We would like to recommend the following changes, however.

We think the last sentence of the explanatory note should be revised to read, "The policies and procedures must be provided to the patients, their families and/or their substitute decision-makers on admission and posted in patient rooms." Families and substitute decision-makers should be part of any decision in treatment.

We've presented this on the basis of the various clauses of the bill, so I'll walk you through them very quickly.

On subsection 34.1(2), the definition of "restraint" should include chemical restraints as well as physical restraints.

On subsection (3), the use of restraints should be defined in the bill as being implemented as a last resort.



Subsection (4): if a restraint must be used without the consent of the patient or the patient substitute, information about this application must be shared with the family, patient substitute decision-maker and hospital administration or appropriate or designated hospital official as soon after the usage as possible. I'll leave the rationale to you in the interests of time, but our rationale for all these recommendations is included.

Subsection (5): the physician's order to use restraints should be made known to and discussed with the patient's family and substitute decision-maker. We recognize that may not always be able to be done before, but it must certainly be made known to the family or substitute decision-maker if an emergency arises and it must be applied.

Subsection (6): patients must not be humiliated in any way through the use of restraints.

Subsection (7): staff training should include knowledge about acute confusion and the sundowning effect, as well as the legal and ethical dimensions concerning the use of restraints.

Subsection (11), referring to subsection (10): the word "reasonable" should be defined; for example, within two hours of restraint. Also, this information should be shared with the hospital administration, as noted previously.

Subsection (12): prohibited use of restraints should include as item 5—that is, this item 5 should be added—a measure to force treatment on a competent patient who refuses treatment. So if a competent patient refuses treatment, they should not be forced under restraints.

Subsection (14): hospitals should provide a copy of their policies and procedures governing the use of restraints to a patient's family member and/or substitute decision-maker, not only to the patient.

Finally, the name of the bill infers that there are restraints that are part of medical treatment. If there are, what are they?

Those are the formal comments. I'll ask Ms Cutler to add some informal comments.

**Ms Judy Cutler:** CARP feels, and I personally feel from having had experience as an informal caregiver at home and in a hospital, that there are some issues that have to be considered in terms of not needing restraints.

One definitely is ageism, as I'm sure has been brought up many times. Another is that with increased palliative care and geriatric care, the elderly would be in a situation that was perhaps more conducive to what their needs were, and restraints would not be so necessary.

Because informal caregivers are becoming integral to the health care system at home and in institutional care, they need to be included in decision-making, they need to be trained, and they need to be supported, because often they are sitting around helpless and just reacting to things instead of being able to deal with situations.

Certainly, cutbacks are an important issue because the staff is less and the workload is more.

I just want to close by saying I heard a while ago a statement that we used to be considered human beings and now we're considered consumers, and since that,

things have changed and elder abuse has become borderline in terms of restraint.

**The Chair:** Thank you very much. Again, we've probably got a couple of minutes per caucus, so we'll hopefully limit it to a question per caucus.

Just an explanation: you made a comment, sir, regarding the explanation note on the bill. That is exactly what it is. It's an explanation note and does not form, or probably will not form, part of the bill.

We'll go to Ms Lankin.

**Ms Lankin:** Thank you very much for your presentation. I think it's a good question when you say, "When could restraints actually be part of medical treatment?"

What was in my mind was if you're in traction, and I've had a really hard time. People have come forward and said, "We've got to get the right definition." If you just view that it is a barrier to free mobility, in fact, when you have a broken leg in traction you're in that situation. Presumably you will have consented, but you could come in from a trauma and not consent, and so I was trying to work through that. But I think your point is at the crux of it: when is it in fact medical treatment? It rarely is and yet it's frequently used.

I wanted to ask you a specific question. In item 7 you refer to staff being trained about acute confusion and the sundowning effect. I'm sorry, I don't know what that terminology means. Could you explain that to me, please?

**Mr Gleberzon:** Sure. In a sense, the point of raising that issue is that these are the kinds of issues that staff have to be aware of before they apply restraint, and it's part of the bigger issue of the need to properly educate staff. The reference, by the way, is to this little pamphlet that was produced by the Ontario government a number of years ago called *Acute Confusion in Seniors: What It Is and How You Can Help*. In this little pamphlet there are definitions of "acute confusion," which is a medical state that many seniors fall into, and many people do as a result of a reaction, if you will, to medications and other forms of treatments. The "sundowning effect" is the fact that these conditions seem to vary by time of day.

It's really to make the point that there's a need for these kinds of conditions to be known. I don't know if this pamphlet is still available. I was part of the unit that produced it and they used to be in the government. I believe they were all thrown out when the government was formed in 1995. But if they are available, they certainly could be very useful because they were produced by geriatricians.

**Ms Lankin:** Could we ask you to lend it to the clerk for 20 minutes so we could photocopy it and get it back to you?

**Mr Gleberzon:** Sure. I'd be happy to do that.

**The Chair:** Thank you, sir. Government caucus.

**Mr Gill:** First of all, thank you again for the presentation. I think your points are very valid, but you may be wishing for quite a bit, in the sense of on page 3, the first couple of lines, "Restraints should be made



known to, and discussed with, the patient's family and substitute decision-maker."

I think those are great things but, practically, I think we heard of a case in point a few hours earlier where the patient had fallen a couple of times. She wanted to go home, but the idea was that she could get hurt again. The daughter also said, "How many times am I going to be called? You are being sort of a burden on me."

Even though this theoretically makes sense, that you should be talking to the family and the decision-maker, practically I don't think that's always possible. But I think your point is valid. It should perhaps be tried.

A little lower on the same page, item 12 says, "A measure to force treatment on a competent patient who is refusing treatment." I think with "competent," again definition-wise it could be quite challenging. How do you determine if the patient is competent and he or she is refusing treatment? According to the professionals, if they are refusing treatment, they may not be felt to be competent. Do you follow where I'm coming from?

**Mr Gleberzon:** Yes.

**Mr Gill:** So that may need more definition or clarification. I have just those observations, unless you wanted to add something to that.

**Ms Cutler:** Obviously there are going to be situations where it's a fine line, but it doesn't mean that should become the rule.

My mother was in the hospital and I was looking after her in the hospital and at home. She was strapped into a chair. She was very frail and she started to feel ill. I went to get the nurse to say she was feeling ill and I was told it's not worth going through the whole exercise for her to sit there for less than half an hour. That's why I say patients have to be treated as human beings and not consumers.

1200

**Mr Gleberzon:** As for the last point, I can only point out that there's been a lot of research done on the issue that you've raised—the last one about competent patients. There's a great deal of literature and, as I understand it, some of the states in the United States have actually legislated around that particular issue. So I think that if there's going to be an exploration of competency, there is a lot of material that you can turn to to assist in defining it.

**The Chair:** The Liberal caucus.

**Mrs Pupatello:** Thank you for your presentation. I find it interesting that the discussion revolves around what we're going to prove in research for increased use of restraints, for example. We are hearing now there is nothing that says there is an increase in restraints, so maybe there isn't a problem after all. That's what I'm starting to hear and it's worrisome to me.

I had the unfortunate experience of spending far too much time in a hospital and listening quite late at night to people yelling, "Nurse, I have to go to the bathroom," and the response was, "It's OK, you can go." Because, you see, in my city there have been such significant cuts to our hospitals resulting in such a lack of staff that often

the patients were diapered because they did not have the staff to get these people to the bathroom. That's the way it was. This is going back to 1995, 1996, 1997. Despite this legendary funding of the health care system, that is the practical reality on the floor for many seniors to deal with. I've spoken with seniors who were completely humiliated to have been diapered and they were completely cognizant that this was happening to them, but it was because they did not have the nursing staff to get these people to the bathroom in a timely fashion.

So I'm suggesting that perhaps the government should institute a count on the use of diapers in Ontario hospitals as well. Then we'll have the proof we need to show that diaper use is on the increase, and maybe we can extend that to say that we don't have enough nursing staff in our hospitals. If we're going to use this kind of rationale to do nothing about the use of restraints, then I think we've got to carry this mentality right through the system and start counting these things so that we'll have a reason then to take this bill seriously. I don't want to mock the government about it. It's just too serious an item. But this is what we're already seeing.

I'm also sensing from the OHA presentation, perhaps, the battle between the will of the people versus the will of the professionals. At some point, it's public opinion that has to drive what we, the public, will receive in health care. In many cases, whether it's good or bad for us, if it's what we want, whose right is it to receive that level of care? This is going to be the battle of the new generation of seniors, in my view: what is it you want and therefore what political will are you prepared to bring to bear to ensure that is how the health service is delivered?

This is not a new experience for CARP, because I think you are being labelled with that advocacy role. It's becoming increasingly apparent that you have huge numbers that you're representing and your group is going to become larger; the demographics tell us that. I guess I want your opinion. In this case, is it what you want as the public that you will insist will be the care you receive or is it going to be the will of the professionals to determine what's best for you?

**Mr Gleberzon:** Just to make a couple of comments: number one, as I understand the bill, this is related to non-medical use of restraints. It has nothing to do with the medical treatment. We did raise the issue about what is, in medical treatment, defined as restraint. Anyway, without pursuing that, the other thing that's disturbing to hear is that in one sector of the health care system there is no evidence being kept, there are no records. If I understand correctly, in the chronic care part of the system we don't know how much, if any, is being used, if it's up or down. The issue has been raised, and the issue has got to be explored.

The third point I can make is that we're responding to the many calls we get from our members who are family members, in many cases, whose parents or family members are being restrained. They didn't know about it; they weren't told about it. They had a sense something



was going on—they didn't know what—because they would find mysterious bruises over different parts of the body.

So yes, we're representing consumers on this, and the message we hear is that the people who call us to give us guidance, to give us information, to give us advice, say, "We do not support restraints." Therefore, we do support a bill that will force the really very limited and judicious use of restraints, if necessary, and the use where everyone—the patient, the family member, the substitute decision-maker and the public—is aware that this is going on.

**The Chair:** Thank you very much for your presentation. That draws to a close the morning session. We will reconvene at 2 o'clock. I thank everybody for their co-operation.

*The committee recessed from 1206 to 1407.*

**The Chair:** Good afternoon, ladies and gentlemen. We will call the meeting to order.

### GERIATRICIANS' ALLIANCE

**The Chair:** The first presenters will be the Geriatricians' Alliance, if you would like to come forward, have a seat and introduce yourselves. You have 15 minutes, which can either be total presentation or part presentation and part questions. Welcome.

**Dr Marisa Zorzitto:** My name is Dr Marisa Zorzitto. I am a geriatrician and I am the past chair of the Geriatricians' Alliance. I am presenting this submission on behalf of our organization. I thank you for allowing us the opportunity to present on this very important issue for the frail elderly.

The Geriatricians' Alliance is a group of approximately 40 geriatricians and internists, mostly in the greater Toronto area, who have organized for the purpose of exchanging information about and advocating for the best practices regarding the quality of care for the frail elderly, regardless of the care setting these vulnerable individuals may find themselves in.

The Geriatricians' Alliance, through its information network, has gathered considerable points of view and scientific information on the use and the abuse of physical restraints and welcomes the opportunity to present their collective views to this committee reviewing Bill 135 which, as you know, is a bill to amend the Public Hospitals Act to regulate the use of restraints that are not part of medical treatment.

The Geriatricians' Alliance strongly supports legislation directed toward improving the care of the elderly and, in particular, the protection of vulnerable elderly with cognitive and behavioural problems.

The Geriatricians' Alliance is in favour of removing outdated practices and adopting more progressive treatments of the frail elderly, particularly in the acute care setting. It is with these principles in mind that the Geriatricians' Alliance supports the proposed amendment to the Ontario Public Hospitals Act.

Some of the background information that leads us to make these recommendations is that Ontario is faced with a rapidly increasing aging population, many of whom are going to need acute hospital care because of a medical crisis, usually pneumonia, a stroke or a diabetic crisis of some sort. With this is associated confusion, weakness and frailty. A review of the literature shows that in Canada, restraint use in acute care among the confused, frail elderly is 33%, and possibly even greater than that, among this select subgroup. This is an extraordinarily high rate compared to the United States, where the prevalence is only 7% to 17%, and the United Kingdom, where restraint-free is the practice.

Restraints are more commonly used in patients who are confused. Fifty per cent of people who die in hospitals have been physically restrained at some point in their hospital stay. Moreover, some patients are restrained even at the end of life. This practice is contrary to every principle of good palliative care.

There is an extensive body of evidence that does not support the use of restraints for the confused, frail elderly patient. Restraints do not prevent falls or self-harm. They do not prevent wandering. Restraints do not prevent the pulling out of therapeutic interventions such as intravenous lines, catheters or feeding tubes. On the contrary, there is a great deal of information regarding the harmful and injurious effects of physical restraint. They have been reported to cause excess agitation, anxiety and combativeness, requiring sedation. Sedation, in turn, causes decreased mobility, decreased level of alertness, poor fluid and food intake, dehydration, problems with swallowing, aspiration pneumonia, the loss of mobility, bedsores, incontinence and regression in overall function.

You can appreciate the cascade of iatrogenic events when a confused older person is restrained without knowledgeable supervision being available. The use of restraints in this setting results in morbidity and mortality and increased health care costs to deal with the iatrogenic problem. Every geriatrician can cite more than one case where physical constraints have contributed to iatrogenic harm to the patient during their stay in hospital. Geriatricians as a group have researched the problems of restraint and have consistently advocated against restraints in favour of more progressive, beneficial and, in the long run, more cost-effective modalities.

Unfortunately, family, nurses and other caregivers have a false sense of security in the use of these outdated modalities of behaviour control for the confused, disoriented elderly patient. Fortunately, reported studies show that educational programs and ongoing monitoring have been effective in reducing the use of restraints by over 50% without the anticipated bad outcomes such as more falls or more use of sedatives. Nevertheless, it has been shown that without consistent, ongoing monitoring and education, the use of restraints tends to increase over time.

Institutions cite the funding cutbacks and the shortage of nursing staff as causes for the high use of restraints, particularly in acute care. The Geriatricians' Alliance



does not accept this argument and does not accept restraints as a substitute for properly educated staff, nor for an enabling environment. There is evidence—legislation such as the restraints bill in the USA and the Long-Term Care Act in Ontario—that restraint-free policies are effective in reducing the use of restraints in these settings. In Ontario there is monitoring of the use of restraints by Ontario Ministry of Health compliance officers and the Canadian Council on Health Services Accreditation. It is with these results in mind that the Geriatricians' Alliance recommends such legislation, regulation and monitoring in the acute care setting.

To be more specific, we would make the following recommendations.

The Geriatricians' Alliance certainly supports the passage of Bill 135 to regulate the non-medical use of physical restraints in our Ontario hospitals. Geriatricians, however, also recognize that laws themselves do not stop undesirable care practices, and for this reason we recommend several strategies to rid our hospitals of this physical abuse of frail, confused elderly.

Some of the methods that we would include are the inclusion of standards in the Canadian Council on Health Services Accreditation of hospitals, as is done with accreditation of long-term-care facilities, to ensure compliance with standards; ensuring mechanisms are in place that enhance education of health care providers in issues around physical restraints, including alternative strategies; supporting the Ontario Hospital Association in reporting restraints use as a quality-of-care indicator in the hospital report card; funding research into the medical reasons why restraints may be justified; and lastly, funding research into the cost-benefit of restraint-free practices.

In conclusion, the Geriatricians' Alliance recommends that the amendment to the Public Hospitals Act be enacted in order to promote humane, quality care for the most vulnerable citizens in the province who, through unfortunate circumstances, find themselves in the acute care setting. Moreover, the use of restraints is not a substitute for adequate staffing, nor is it a substitute for progressive care practices, nor a substitute for age-appropriate physical environments.

Thank you for giving me your attention in addressing this issue.

**The Chair:** Thank you very much. We've got a couple of minutes for each caucus, so we'll limit it to one question, if we could. The first one would be the PC caucus.

**Mr Tascona:** I want to thank you for your presentation. Earlier this morning we heard from the Ontario Hospital Association. I note in your presentation, at the second page, that the Geriatricians' Alliance does not accept any relationship between funding and shortage of nursing staff as causes for the use of restraints. The OHA accepted that there was no relationship between funding and the incidence of restraints. In fact, their policy is the least restraint, and that's what the focus of their task force is going to be.

In their conclusions, they don't support the legislation as drafted. They're embarking on a task force to look into this matter a little bit more in terms of there needing to be an impact analysis of what's going on out there in their own sector, which is the public hospitals. Would you support the OHA task force, which was established in December 2000, as something that should be done before any legislation would be implemented in this area?

**Dr Zorzitto:** I'll speak for the alliance.

**Mr Tascona:** That's who I'm asking to speak.

1420

**Dr Zorzitto:** OK. The alliance is in favour of legislation. I should say that in 1993 or 1994 the Ontario Hospital Association already had guidelines, but if these guidelines for the participating hospitals have been implemented, they certainly haven't been monitored or been effective. Reviving this whole issue of the use of restraints has come much more to the foreground and has seen a lot greater activity in this area just by virtue of the fact that we are contemplating legislation, because it has more clout and gives the public and the vulnerable more protection. I think if the legislation is in place, there will be a greater incentive for organizations to be serious about this.

**Mr Tascona:** I think the OHA is serious about it. They started a task force in December 2000, and I think their position was to complete that task force and then look at dealing with legislation, if any is necessary. Do you think that's a fair position?

**Dr Zorzitto:** I think it would bring unnecessary delay.

**Mrs Pupatello:** Good afternoon. I believe you have some roots in my city.

**Dr Zorzitto:** Yes.

**Mrs Pupatello:** On behalf of all the members of the Fogolar club who watch your career proudly, even though you're in Toronto now, I'm going to go back there and tell them we had a chance to hear from you at committee today. It's very nice to see you.

I want to correct the record in terms of what the OHA did say and what they were supporting in terms of use. What the OHA said when they were here this morning was that they don't have data to prove that the cuts in funding are resulting in increased use of restraints. They don't know for certain that there's an increased use of restraints because no one is monitoring it. That's what the OHA said. They did not in fact deny that was the case; they simply don't know for certain. We need to be clear about that.

**Mr Tascona:** I think that's on the record, member.

**Mrs Pupatello:** That certainly will correct the record.

I really found your language quite strong when you said, on page 2 of your submission, "For this reason we recommend several strategies to rid our hospitals of this physical abuse." That's very strong language. If the language is so strong—there is no doubt in your mind that this is considered abuse—what other methods are there for professionals in this field, such as yourself, to go forward? Recognizing why it's sometimes required, I'm surprised that as an alliance you would come forward



with that strong language and not have an impact in the hospital setting currently.

**Dr Zorzitto:** There may be a number of reasons. Education is certainly a part of it, and also the physical environment. The physical environments of most of our hospitals today are really not geared to dealing with a fairly large number of elderly and confused people who wind up in an acute care hospital. So it's the number of confused elderly who are in the hospital. There is a certain body of knowledge that is not being transmitted to general staff, and the actual hospital environment doesn't allow for people wandering around, doesn't allow for maybe a safe private room where a person could stay, maybe doesn't allow for other means of having some supervision there.

**Mrs Pupatello:** As a for instance in this case, the doctor is the one who is going to say, "This is what you are to do with this patient and this is what you are not to do with this patient." If you are a patient who is confused in Windsor, the staff will beg family members to stay all night, because the patient is not in control. If that same patient were then sent to a London hospital, like university hospital, that hospital administration will call a private company and bring in a person to stay overnight with the patient. That's because the London hospitals have funding to pay for that staff person, whereas the Windsor hospitals do not have the funding to pay for that additional staff person. This is a very concrete example, within the last two days, where this has happened and it is a function of the budget. But if the doctor who is in charge of the patient were to say, "I order this patient not be left alone," which may then preclude the use of restraint, that in fact is the role that the doctor would play. Is that how it would pan out in real life?

**Dr Zorzitto:** Yes. That additional person could also be requested by, let's say, the nursing profession who say this person requires more one-on-one supervision or attention. It doesn't necessarily require a doctor's order. But restraint does.

**The Chair:** Ms Lankin.

**Ms Lankin:** Just picking up on Mrs Pupatello's point about the difference in hospitals, I've seen, for example, within the Toronto area, very different treatment of confused elderly. I can cite one hospital, for example, the Orthopaedic and Arthritic, which has a different atmosphere in it, because they're not treating diseases. They're treating bones, right? It's hips and knees, and there's just a whole different mentality.

Many of their patients are elderly and many of those patients coming through a major operation, spinal or hip operation, have post-anaesthetic confusion for a period of three or four days, and it is regular practice for them in the evenings to bring in a bed-sitter as part of the service that they provide, and yet other acute care hospitals don't have that. It's a question of staffing allocation, not necessarily funding of the hospitals but the decisions within the hospitals. Are you aware of different hospitals' approaches to this issue?

**Dr Zorzitto:** Personally, most of the acute care hospitals that I have been involved with seem to be pretty much the same.

**Ms Lankin:** And that is?

**Dr Zorzitto:** That is that mostly they use restraints.

**Ms Lankin:** We heard this morning the Ontario Hospital Association indicate that there's just no data to say whether or not restraint is being used frequently, more frequently, less frequently, and I think that's true. There isn't hard evidence at this point in time. There are studies that have been done at moments in time—

**Dr Zorzitto:** Yes.

**Ms Lankin:** —that give us some indication of the higher frequency of use of restraints in Canada versus other jurisdictions, but the members of the alliance are people who serve that age population in our hospitals in the GTA in particular. From your experience, do you think there is a high frequency of restraint being used? Could you describe for us what your experience is?

**Dr Zorzitto:** My experience in the acute care facilities I have worked in is that physical restraint use is quite common. I can't say whether it's 50%, but it is common.

**Ms Lankin:** Maybe just one last question. Compared to long-term-care facilities where we actually have regulation in place that says, "Use least restraint," there's a law, have you had experience there? Is there a difference in the—

**Dr Zorzitto:** I have episodically gone to attend at nursing homes or homes for the aged. It seems to me that it's a much more home-like environment—maybe many more individuals who deal with attendant kind of care, less formal but still supervisory care—and they may not be quite as agitated in that environment as well and not requiring the various restraints.

**Ms Lankin:** More age-appropriate care.

**Dr Zorzitto:** Right.

**The Chair:** On that, we will finish. Thank you very much for your presentation, Doctor. It's a pleasure.

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## MEL STARKMAN

**The Chair:** The next presenter is Mr Mel Starkman, please. You have 15 minutes, sir, either for presentation and/or questions or both. Welcome.

**Mr Mel Starkman:** I'll just take some water, if you don't mind. I take medication, and my mouth is very dry.

You have in front of you a deputation that was sent to you by Don Weitz, a close friend of mine. I'm Mel Starkman, the Mel who is mentioned in that particular deputation.

I basically agree with this bill, in what it's trying to do. The only thing I would have to say is that the bill should cast its net a bit wider. I know the Mental Health Act does have provisions for restraints and that's the problem we're concerned about, that those regulations are being used and abused. People go into mental hospitals, they have problems and they're supposed to be cared for by the caregivers. This bill doesn't designate, other



than public hospitals, but a wider net should be cast, as no one is speaking for the consumer-survivors therein. We have people suffering from various illnesses and injuries who are prone to be put under restraint, which this bill speaks to, but inadequately in an age of fuller restraints.

In my situation, I was in mental turmoil, not physical turmoil, as I will describe below. How much worse off are those who are ill, old or injured? I would argue, after my initial psychiatrization, everything that occurred to me after that event was iatrogenic, medically induced.

For the purpose of this submission I am calling myself a survivor of the mental health services. For three to five years I was under physical restraints, off and on. Since 1966 I have been in and out of the system, first in Branson hospital, then the Clarke and then Queen Street, or satellite facilities such as a home for special care, a men's boarding home and now a retirement residence, still as an outpatient of Queen Street. I have been under physical, mechanical, chemical and what I call menial restraints. I have also had 38 shock treatments over a period of two years from 1966 to 1968, and that is part of the problem that I carry with me to this day. Whether or not something else could have been done, I don't know; I'm not a professional. I was a professional archivist, and I was working at my job off and on for close to 20 years and I was going into hospital every few months getting shock treatments. The long and short of it is they didn't do me any good, despite what I was told.

We need to pierce the veil behind excessive restraints for "mental patients" who are treated on a sliding scale from neglect to abuse.

My memories of being in restraints aren't very distinct, just fleeting flashbacks. The memories have left emotional and some physical scars. In various numbers of leather straps I was very uncomfortable and agitated, at times incontinent and delusional. My nurses' and medical care notes that I do have from my review board hearing make for very interesting reading from 1991 to 1993. I reviewed them last year and noticed that it was written in when I was in restraints, what time I went into restraints, but it was never written in when I left restraints.

I could have been in restraints for two hours, four hours or six hours. I have no recollection, and the notes don't make any particular note of that. I know I was on Q15 observation, and the nurses looked in on me every now and then and they didn't do very much. I know that I was struggling in these restraints and finally I drifted off into some kind of delusional stupor. If I was doing badly in the restraints, their answer was chemical restraints. They would give me something in the arm or the buttocks or something of that nature, and I would drift off into sleep. As I said, it was a very delusional sleep.

They did say what was happening before I went into restraints and then they debriefed me when I came out of restraints. Debriefing was, "Well, how did you feel when you were in restraints? Can you talk to us now? Can you behave now?" What was I supposed to say to them? As

you notice, I am very nervous now, even though I'm six years out of hospital. I'm still under a lot of medication, which is making me shaky or what you want.

As I said, in each case I had no idea how long I was in restraints. No mention was made in the notes of possible lesser, least-restrictive restraints.

While under restraint, you become agitated, fearful and insecure, to say the least. Restraints can lead to muscle deconditioning or lack of co-ordination, putting one at risk of a fall. I've seen a number of studies which have shown a marked decrease in falls from less intrusive restraints. The greater the restraints, the higher the injury factor.

In countries like Great Britain and New Zealand, the use of restraints is a rare option.

I couldn't find it in my case notes, but I distinctly remember being tied up in rough rope, not straps or anything of that nature but rough rope. I was tied up from the top of my head through my arms and down to the bottom of my feet. Who ordered that, I don't know. I can't believe it was the doctor who ordered that. I think it was just—I'm looking for the word—some malicious orderly who thought they were having some fun or something like that by putting me in that kind of restraint. Every time I figured out why I was in restraints, that something was wrong, they said, "You're OK now. You're out of the restraints." I've read the Mental Health Act with the various kinds of restraints you put in it. I have never seen rough rope being included.

Nobody else on the floor was having this done to them. This was in the rehabilitation ward and, as I remember correctly, I don't think in the rehabilitation ward there was anybody else who was on restraints. There were people who were in seclusion rooms, that I admit, but on the rehabilitation ward there was nobody else who was on physical restraints. I was the only one. Why I was in rehabilitation, I don't know. I was much better off on the other floors, where I wasn't in restraints, where I wasn't as agitated and as nervous as I was when I got on the rehabilitation floor.

Chemical restraints are another story altogether. The effects and the side effects are very dangerous. I recommend that all survivors and "mental health professionals" read Peter Breggin and David Cohen's book on drugs, *Your Drug May Be Your Problem*. My problem is that I live in a city where there are no doctors who can wean me off the pills. Never again will I try—I tried to get myself off the pills. I did a very foolish thing. I went off the pills cold turkey and I lasted for two years, but then I got horrendously sick. So I can tell you that chemicals do hinder rehabilitation.

Some restraints are very radical, meant to subdue you, like shock treatment and psychosurgery. The former is still being used even though we don't have very many statistics about that, but we know it is still being used, while the latter is used only with informed consent, or so-called informed consent. Bill 135 unfortunately does not address these problems.



In an effort to be more positive, I'd like to make some recommendations.

Stop demeaning restrictions, like putting you in py-jamas and taking away your street clothes and restricting visits from friends and relatives; facilitate a prompt visit from a patient advocate and lawyer; make a telephone available; and no seclusion rooms. And this is one idea which could be very well used in a time of declining budgets or cutbacks: peer support workers who could be trained and could monitor consumers or survivors in restraints. When the staff can't be with them, you could have a peer support worker. They work in other venues even as we speak today, in places like Sound Times, where they are very helpful to people who come in there, and in other patient-oriented drop-ins where the peer support workers do help out their fellow "patients."

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What I did want to say is that I developed neuroleptic malignant syndrome from the drugs and came close to death. I wouldn't want to repeat that experience.

In conclusion, I want to thank you very much for listening to me. I could say a few more things. I am very active in the survivor community. I'm on the board of Sound Times, a member-driven social, recreational and educational program. Further, I'm on the Edmond Yu Safe House committee, with various subcommittees, and the No Force committee, which takes its time to try to educate both survivors and "mental health workers." Thanks to my survivor friends, I've developed strengths that Queen Street never really thought I had, but I'm still under chemical restraints, as I've said, and as so many of my friends are. That's why we have to go beyond Bill 135.

Thank you very much. Do you have any questions?

**The Chair:** We have about a minute per caucus, so it will have to be a very quick question, and I believe it's the Liberal caucus first.

**Mr Lalonde:** Thank you very much for taking the time to come down and explain to us the experience you have gone through. You're the type of person we should have at any time we discuss amending especially the health act.

You have gone through the physical restraint and you've gone through medication restraint. Given the fact that on a daily basis you have to deal with a nurse who is taking care of you and the fact that she's the one who probably tied you up to a chair, how do you feel about that person if you had a good rapport with her in the past prior to her tying you up in the chair?

**Mr Starkman:** The truth of the matter is that I didn't particularly hate or despise the person whatsoever. In my own way, I felt sorry for her because she was in a situation where she had very little choice. If she hadn't put me in restraints—there was so much going on around the place, and from the medications I was going haywire—what was she supposed to do? She had no choice. But I keep saying they could have used lesser restraints than what they used. I was treated well, but some parts of it I don't understand. I'm just at a loss to understand.

**Ms Lankin:** Mr Starkman, thank you so much for coming forward. I'm sure it's difficult to retell those days that you've lived through.

As the sponsor of the bill, let me tell you that my goal was to try and bring in some kind of law for a section of the health system where there's no law at all, and that's the acute care hospital.

I've had a number of people say to me that there are elements in this bill that they wish were in place for patients under the Mental Health Act, whether they are in an Ontario psychiatric hospital or in a psychiatric ward of a general hospital that's covered under the Mental Health Act, and that would apply to the situation you've spoken to, or in fact under the Long-Term Care Act. I think that perhaps down the road one of the things we need to do in Ontario is look overall at restraint policy that governs all of our health care facilities, but in the meantime not to lose the opportunity to proceed.

I'm hopeful that people like yourself would appreciate why I'm trying to proceed to cover the area that's not covered yet and maybe engage the government in a longer-term process to look at harmonization of the provisions across all the sectors.

**Mr Starkman:** Just to make one comment, I know that Cam is already doing something toward this, because I'm involved in a video that they are making. They're asking patients who have had various experiences in restraints what they think of restraints, and very much of what I covered today I covered in that video. I hope it gets further exposure than just to the mental health professionals. The Working Like Crazy video that was made about the Ontario Council of Alternative Businesses I hope gets further distribution throughout the population.

**Mr Wettlaufer:** Mr Starkman, I just want to thank you for having the courage to come down here and relay your personal experiences. That will be invaluable to each of us as we review the amendments to the bill, or clause-by-clause, whichever Ms Lankin wants. Thank you very much.

**The Chair:** Thank you, Mr Starkman, for your presentation. We appreciate it.

## MENTAL HEALTH LEGAL COMMITTEE

**The Chair:** The final presenter today will be the Mental Health Legal Committee. Welcome. You have 15 minutes, either by questions or presentation. Would you identify yourself, and thank you very much for coming.

**Ms Anita Szigeti:** Good afternoon, Mr Chair. I was hoping you'd be happy to see me because I appear to be the last presenter today.

My name is Anita Szigeti. I'm chair of the Mental Health Legal Committee. We are an organization of lawyers who advocate on behalf of the civil and legal rights of persons with serious mental health issues. In some sense, I'm here to buttress and support the arguments and eloquent submission that Mr Starkman has just made to you, as well as to support the submissions you heard earlier from the Advocacy Centre for the Elderly.



I want to bring to you our experience as lawyers who represent hundreds of clients in mental health facilities regarding their experience with restraints.

I want to tell you that the use and application of various types of restraints in psychiatric facilities varies widely from institution to institution, and within each facility from ward to ward. Sadly, we see many instances where locked seclusion, which health care practitioners often refer to as therapeutic quiet, consisting of a mattress or a pad on the floor, often without any bathroom facilities, becomes someone's home without reprieve for days, weeks or months at a time. Many of our clients never get out of some type of physical restraint, for instance, a waist-wrist restraint. For years, they will eat, sleep and go to the washroom wearing those types of restraints.

Many of our clients are routinely given major tranquilizers or injectable anti-psychotic medications as so-called "as needed PRNs," also known as chemical restraint. Alarming, sometimes these measures are obviously implemented for staff convenience and, on occasion, as a form of punishment of the patient. It is very disturbing indeed that the same patient, manifesting the same set of behaviours, will be secluded and restrained often in one unit of a facility while allowed to roam free in another unit.

To illustrate our clients' experiences with restraints, I would like to highlight for you three examples. These are actual stories of my clients. For purposes of solicitor-client confidence they've been shuffled around a bit but, I tell you, it's close enough.

One of my clients is a lady who was born in 1924. At the age of 23 she gave birth to a son. Shortly thereafter, she suffered an episode of what is now believed to have been post-partum psychosis, a condition which apparently has never responded to treatment. Mrs X, let's call her, is now 77 years old. Since 1947 she has been an involuntary psychiatric in-patient in a provincial psychiatric facility, for over 53 years. Most of her life she has been the subject of one type of restraint or another. Always residing on locked psychiatric units, often in physical or mechanical restraints, constantly administered chemical restraints, these days she is most often found secured to her geri-chair.

Another client is only 26 years old. He suffers from a genetic disorder which resulted in developmental delays such that his intellectual or emotional age appears to have been capped at about the age of four.

Approximately six years ago he became angry at a convenience store owner for not giving him a quarter that he was asking for and strong words were exchanged. The individual was found not criminally responsible of the offence of mischief or some other minor criminal offence and, then, under the auspices of the ORB, was remanded to detention in a psychiatric facility.

For the first four years or so, he was very often secluded, regularly spending extended periods of time in physical restraints, receiving PRN injections of chemical restraint, due to aggressive behaviour vis-à-vis other

clients, patients or staff. He had a diagnosis of something called intermittent explosive disorder, which in 1999 was removed from the DSM, because I think it became apparent that it meant he got angry sometimes. His speech was also difficult to understand because the Hurler's syndrome he had affected the structure of his mouth.

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Then one day a behavioural therapist started to work with him. This therapist discovered that my client was fluent in sign language, something he'd learned as he was raised with children who were hearing-impaired. The therapist began his work with the client. This, slowly over time, allowed my client to live almost entirely without the need for any type of restraint, including any locked seclusion. So today you have an individual who is essentially a happy, smiling young man who goes out on excursions every day, who has learned with the appropriate help to just walk away when he gets angry and frustrated.

My last story is about a young native woman who was 17 years old when she was raped, became pregnant as a result of the sexual assault and had an abortion. Subsequently, she turned to street drugs and suffered a drug-induced psychosis. Upon admission to a psychiatric facility, she was promptly restrained and injected with a chemical restraint. This experience for her rendered her essentially mute for a long period after the admission to the psychiatric facility. She subsequently told us of the treatment she received in the psychiatric ward. It became for her a direct retraumatization of the sexual assault, something which then drove her away from voluntarily accessing psychiatric care at a time when she most needed it.

Those were the anecdotes. Unfortunately, as you've heard from Mr Starkman, there are hundreds, if not thousands, of similar stories around the province.

I just want to make two comments about the debates we heard earlier in the morning. One is that my reading of this bill is that it's not meant to be politically motivated, that it's not meant to be about health care funding. We're all in favour of health care funding, but this bill, as I see it, is not meant to be about health care at all. It's about, what I read from it and what I support, prohibiting the illegal use of restraint. It's about a legal point, and that is, when does our law permit restraint and when is a restraint that's applied illegal? So it's a purely legal question.

The other thing I heard being debated is whether or not there are statistics to support the notion that the incidence of restraint is on the rise. It's my feeling that those statistics are entirely beside the point. If there has been one situation where restraint has been applied to an individual that may have been illegal—and it sounds as if the justifications perhaps for the restraint of Ms Lankin's mother may or may not have been there. But you've got at least one incident where someone was bound and restrained, to which someone objected. If you've got one situation where that type of restraint has been used, it's my submission that that's one too many and we need this



type of legislation to make sure that doesn't happen again.

These are the reasons we support any effort to regulate or control the administration of restraints to anyone under any circumstances. We support the intent of Bill 135. We would, however, as Mr Starkman has said, like to see its protections extended to involuntary psychiatric patients and all patients under the forensic mental health stream who are now detained in psychiatric facilities.

What I'm saying is actually more immediately relevant than just asking for the dream world of applying this to the MHA, the reason being that, as you well understand, while some psychiatric facilities are not public hospitals and some public hospitals are not psychiatric facilities, certainly there are a great number of public hospitals that are also psychiatric facilities. What I'm concerned about is that by enacting this bill with the best intentions, you're actually going to have the impact of eroding some existing rights of some psychiatric patients when they are psychiatric patients in psych facilities that are also public hospitals. We've given you some written submissions that I think take you through very clearly what some of those inadvertent dilutions of existing rights might be. I'm not going to go through all that. I want to leave a bit of time for people to ask questions.

I want to tell you that we support ACE's recommendations. The recommendations we want to focus on are included on the second page of the executive summary. Essentially, they are to agitate for the definition of "restraint" to be more comprehensive, to include environmental and chemical restraint as well as physical restraint; to make sure that you include something in Bill 135 that makes it very clear that this bill does not give authority to physicians to detain either voluntary patients who happen to be psychiatric patients, whether within a psychiatric facility that is a public hospital or not; that this bill does not authorize the restraint or detention of medical patients in public hospitals who would otherwise fit the criteria for an involuntary psychiatric admission.

What I'm worried about is that physicians will say, "I don't need to certify this patient even though they meet the involuntary admission criteria under the Mental Health Act. I can just go by Bill 135 and apply restraint to them, because that's all I really want to do anyway." That will deprive the individual of a right of review before a tribunal and an opportunity to get out not only of those restraints but of the institution.

Those are some of the points I wanted to make.

In a perfect world I'd like to see the importation of some of the due process protections and the higher level of protection that Bill 135 affords into the Mental Health Act, so that you don't have a discrepancy—in ACE's paper they point this out to you—between two individuals lying in the acute care unit of a public hospital, one of whom happens to also be an involuntary psychiatric patient at that public hospital, which is a psych facility, and the other one is not an involuntary psychiatric patient. For the person who is not an involuntary psychiatric admission, the Bills 135 rules

around restraint would apply: there is consent that's required, there is documentation that is more excessive, there is two-hour monitoring, there's the requirement to disclose when a restraint has been administered. Meanwhile, the individual who is an involuntary psychiatric patient is governed by the Mental Health Act and doesn't have any of those types of protection, just has the minimal protections attaching to the Mental Health Act. This could be very problematic for my clientele.

In general terms, the thrust of the bill is appreciated and I think it's in the right direction.

I'll stop there. If I have left any time, I'll be happy to answer questions.

**The Chair:** Thank you very much. I think we probably do have a couple of minutes each.

**Ms Lankin:** Thank you, Ms Szigeti. As always, it was clear, concise and powerful, and a bit overwhelming in a sense. As we know, there are complexities in the Mental Health Act and all of the issues—rights issues and rights advice and those sorts of things—which we don't want to see anyone lose, but which are very difficult to import into the Bill 135 acute care setting, yet some of the monitoring and accountability provisions in Bill 135 would be nice to have in the Mental Health Act. You heard what I said to Mr Starkman. I could repeat my comments, how I feel like I don't want to lose the opportunity to move in terms of the acute care system.

From a legal perspective, one of the things I find most fascinating is that in fact there is no law, other than common law duty to care in an emergency situation, that allows, as I understand it, for the restraint of patients in an acute care hospital, outside of what is in the Mental Health Act in that circumstance. So at this point in time, an alternative for someone who was in my family situation, who had a family member restrained against their will, would have been to potentially pursue what, criminal charges? What options are there if we don't move to have something that clarifies this?

**Ms Szigeti:** I think that's correct, first of all. My paper sets out very clearly the only source of law on this issue is the common law, which strictly says that in an emergency you may prevent immediate serious bodily harm to the person or others, or the Mental Health Act, which applies only to involuntary psychiatric patients in psychiatric facilities.

The remedy is two-fold. One is to press criminal charges for false imprisonment and for excessive use of force. There is criminal law that says you can protect yourself, self-defence, and protect others under your care up to a reasonable point, but with any excessive use of force, you've got false imprisonment. I always get them confused: the other is false confinement. You certainly do have the civil action, either with respect to assault or false confinement.

Those are civil lawsuits that we don't often see but we could see every time an illegal restraint does happen. You would think physicians would be pleased to have a piece of legislation which maybe gives them some guidance and direction, and staves off some of those lawsuits



if it can. But it does absolutely have to be made clear that this is not your green light to go ahead.

**Ms Lankin:** That's right. That language is currently in the Mental Health Act, a provision that says, "Nothing in this act authorizes the detention or restraint," and it's impossible to import that language into Bill 135.

**Ms Szigeti:** I make some suggestions of how you could import that very language. I have given you specific options and ways in which you might want to consider doing that. I think it's important. I'm very concerned that physicians will say, "For the involuntary patient we have the Mental Health Act, and for the voluntary psychiatric patient or the non-psychiatric medical patient, we have Bill 135." That worries me.

**The Chair:** Thank you very much. The government caucus.

**Mr Gill:** One of the things I agree with is you in a sense saying that even sometimes one restraint is too many. Are you strictly against the restraints, or in some settings, in some situations, are you saying that restraints are needed?

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**Ms Szigeti:** I think I would agree with the current state of the law. We've got the common law, which tells us that in certain situations a restraint is going to be required, and that's when there is immediate risk of serious bodily harm to the individual or to another person. So there are some cases.

**Mr Gill:** Judged by whom? Who judges that immediate harm? Who would judge that?

**Ms Szigeti:** Presumably someone who knows something about how to assess whether that harm is likely to occur. Whoever has the appropriate training, not just about whether the harm will occur but also about alternative measures and how to sort of de-escalate and prevent that harm. Whether it's a physician or a nurse—is that the type of question you're asking me?—I don't know.

**Mr Gill:** Yes, that orderly or nurse or doctor, again, subject to—

**Ms Szigeti:** I have some concerns about the orderly. Maybe that's not fair of me. I haven't really turned my mind to this issue. I think restraint should be pursuant to a physician's orders, though. Honestly, I haven't given it enough thought. I'd be happy to give it more thought and let you know when I come up with something.

**Mr Gill:** One more thing, if I may; I would like to have asked this of Mr Starkman. Perhaps you can answer it, because you represent those people. He mentioned something about—as I take it, he's on medication, but he called it being under chemical restraint. I thought he could make his own decision and could say, "I don't want it. The restraint is restrictive. Don't put it on me if I don't want it." He did mention that he is under chemical restraint, but I thought he could make his own decisions. Can you explain that?

**Ms Szigeti:** Let Mr Starkman explain his own situation. I think what I heard him say was that—

**Mr Gill:** Other people in that situation.

**Ms Szigeti:** There's a difference between chemical restraint and, for example, antipsychotic medication you would be taking as treatment. You're quite right that when it's treatment, there has to be appropriate consent. If you're a capable individual in law, you have the right to refuse that medical treatment, and the fact that it's psychiatric treatment makes no difference. So if you're able to understand the necessary information and appreciate the consequences of refusing treatment, you have the right to refuse that treatment.

Chemical restraint, though, the so-called PRN or as-needed injection, most often is not something for which you do need consent, so it's regularly administered to my clientele. In some institutions, the PRNs are delivered at 5 o'clock every day to everyone on the unit.

**Mr Gill:** I was thinking more of people who can make their own decisions and still think they're under restraint, but they're under medication and if they give that up they know they're going to get into some serious problems.

**Ms Szigeti:** Even people who are entitled in law to make their own decisions as to whether or not to receive treatment can be chemically restrained in certain situations, again to prevent injury to themselves or others, at least notionally. They can be given a psychiatric medication against their will, even if they're capable of refusing it. That's the state of the law.

What we're concerned about is preventing abuses of that, precisely in the same way as physical restraints are sometimes abused, to include those prohibitions against staff convenience or punishing the patient, to prevent the administration of a chemical restraint for those types of purposes. That's why I'd like to see those sections, particularly, expanded to include a chemical restraint.

**The Chair:** Thank you, Mr Gill. From the Liberal caucus, Mrs Pupatello.

**Mrs Pupatello:** Thank you for your presentation. It was very well prepared. I appreciated your comments at the outset regarding the sidebar issue of funding. I wonder if you would offer an opinion: What many of the staff people I've spoken with in a hospital setting would like to do in terms of care is not what the system allows them to do, and that's why I keep coming back to funding issues. They've got the right intentions; they intend to do well. If they could, they would have handled the situation differently. It's a matter of the way the system currently is. It doesn't afford them the luxury of doing what they ought to do. They're doing what they have to do because of the system they work in.

That's difficult, because it's very frustrating for family members across the board. What was interesting about the gentleman who presented ahead of you was the examples he gave as recommendations of what not to do, in terms of "Don't take these elements"—the phones, restricting visitation, etc. There is an assumption inherent in those recommendations that family exists, that there are friends, a network, a social circle around that individual, which often is not the case when we're dealing with elderly people. They are often alone and family does not live in the same city.

Even the recommendations coming forward are subject to the availability of that outside group to come in and act as advocates in that circumstance. I don't know what advice you can offer. This is the world we live in, though.

**Ms Szigeti:** Right. I'm not suggesting it wouldn't assist anyone to have better funding, better health care, more staff and more services available. Of course it would. But I think this isn't a question of best practices. You don't legislate best practices. As the OHA recommends, you can sort of leave best practices at the policy level and leave hospitals or facilities to individually set their own guidelines for what they would prefer to see.

What I want to drive home is that this is a question of illegal versus legal action. Maybe the nursing staff who doesn't have enough others around her so she can't monitor or supervise such that a restraint is not necessary would then still hesitate knowing that the application of that restraint was going to get her sued. We're talking about legal situations versus illegal situations. I appreciate there are pressures on people, but I think what is missing is the understanding that it's absolutely illegal to

do certain things. Whether they are staffing shortages or a lack of services, I think if the individual health care provider understands that some things are legal and some things are not legal, they then manage their own liability in that regard, quite apart from everything else.

What I was hoping to do was refocus on the notion that this is a legal document. It's legislation. It's about definitions of restraint, permitted or prohibited, and it's entirely a legal question in that very narrow scope. I'm just concerned that we not do anything that muddles that territory more than it already is but rather try to stay within our objective of reducing and trying to eliminate the need for restraint.

**The Chair:** Thank you very much for your presentation.

I think that's the end of the presentations today. I want to remind the committee that we will be meeting tomorrow in committee room 1, rather than in this room, and that we will commence at 10 am.

Meeting adjourned.

*The committee adjourned at 1507.*











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## Legislative Assembly of Ontario

First Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Première session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 13 February 2001

# Journal des débats (Hansard)

Mardi 13 février 2001

## Standing committee on the Legislative Assembly

Public Hospitals Amendment Act  
(Patient Restraints), 2000

## Comité permanent de l'Assemblée législative

Loi de 2000 modifiant  
la Loi sur les hôpitaux publics  
(mesures de contention)



Chair: R. Gary Stewart  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLY

Tuesday 13 February 2001

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Mardi 13 février 2001

*The committee met at 1002 in committee room 1.*PUBLIC HOSPITALS AMENDMENT ACT  
(PATIENT RESTRAINTS), 2000LOI DE 2000 MODIFIANT  
LA LOI SUR LES HÔPITAUX PUBLICS  
(MESURES DE CONTENTION)

Consideration of Bill 135, An Act to amend the Public Hospitals Act to regulate the use of restraints that are not part of medical treatment / Projet de loi 135, Loi modifiant la Loi sur les hôpitaux publics pour réglementer l'utilisation de mesures de contention qui ne font pas partie d'un traitement médical.

**The Acting Chair (Mr Wayne Wettlaufer):** Good morning. I'd like to call the meeting to order. I would hope this morning that we can give everybody the consideration they are due, from Ms Lankin to the presenters, and not get into political posturing today. I think that this matter is too important.

JUDY LEVER  
WILLIAM MOLLOY

**The Acting Chair:** With that, I'd like to call our first presenters. I wonder if you would introduce yourselves, please, for Hansard, and we'll get on. You have 30 minutes. You can use any or all of it in your presentation. If there is any time left over, we'll have questions from the three caucuses.

**Ms Judy Lever:** I'm Judy Lever. I'm a clinical nurse specialist at the Hamilton Health Sciences Corp. My specialty is in gerontology and my specialty is dementia care. I'm here today because I feel strongly that we need legislation to monitor restraint, because I've been working for the last 15 years in my institution and throughout Ontario, trying to get policies of least restraint developed and implemented.

We did some research a number of years ago because of increasing concerns about the degree of restraint being used in our hospital. We countered restraints in four different institutions and published this in *Humane Medicine*. It's called *Prevalence of Physical Restraints in Four Different Settings and Their Relationship to Medication Use*.

In the hospital that I worked in, of the age-75 population and over, more than 70% of them in hospital were

restrained at 10 o'clock in the morning. They were restrained with vests that tied at the back and underneath the bed or around the chair. They were restrained with wristlets, tying their arms from either side. They were restrained in geriatric chairs. They were restrained in beds with bed rails up so that they couldn't get up and go to the bathroom. It was just quite appalling to me that we could treat our seniors in this way.

So basically, I did another study, because we were working to try to get a policy of least restraint at our hospital; we didn't have one. I worked on a committee for a couple of years, and it took quite a long time before I was allowed to do a pilot study where we would examine the degree of restraint and reduce restraints on a couple of ward areas in the hospital. We did this over a six-month period of time, with no real cost to the hospital except for my time and effort and the staff having to come to education sessions that were held by me.

Over the six-month period of time, we were able to reduce restraints by 50% on the two ward areas, with no increase in falls or significant injuries. We published this. It's called *Reduction of Restraint Use through Policy Implementation and Education*. This was published in *Perspectives* magazine, which is the Canadian gerontological nurses' magazine, in 1995.

Subsequent to that I realized that if we weren't going to monitor regularly, there might be a problem. So six months after we finished doing the study on the two ward areas, I went back in and did a prevalence count of restraints after there was no emphasis being put on restraint reduction and no more education. The degree of restraint had gone back up to a higher level in terms of day-to-day restraints than there was before I actually started the study. So I realized at that time that a lot of it was attitudinal and it required a lot of changing of old habits that die hard. I don't think it has anything to do particularly with the degree of falls or the severity of a person's illness when they come into hospital.

As a result of all of that work, I wrote a booklet called *Set Me Free*, which is a booklet to educate staff members on the different reasons why people might be considered for restraints: people who might tend to fall, people who have difficult behaviours that are hard to manage, the habit type of restraint for the older person who just looks a bit frail and the staff might be concerned that they would injure themselves somehow.



I documented in this book how to reduce restraints and use alternative methods. I wanted to use this booklet in a large, randomized, controlled trial in various hospitals in Ontario to see whether we could actually get a reduction in restraints. However, we haven't been able to get funding in or go that far.

I also developed a small booklet of the same name, *Set Me Free*, for family members. This was to be used by health care professionals to introduce the possibility of restraints and to educate family members about restraint use prior to having the team discussion about the use of restraints.

I've brought some of the alternatives that are available for restraints today that are quite easy. This one is a stop sign that can be put across a door that you don't want someone to go through. It's just attached with Velcro on either side of the door. It looks sort of like a construction area. For people who are memory impaired this will often work because, although they are not able to read a sentence or something, they recognize the common signage and are able to turn around and go elsewhere. There are also things called hip guards, which is just one product that's on the market today, that a person could have put on their hips if they are at high risk to fall. These are not things that are commonly used in hospitals today. Instead of using these kinds of alternatives, we tend to put people in geriatric chairs. We put their bed rails up, we tie them down and we reduce their mobility. It just makes it a very bad scene.

Most of the nurses in the hospitals know that there's a policy of least restraint, and in most hospitals in Ontario we have policies of least restraint. We have protocols, but they're not working. So my bottom line today is that I think legislation is long overdue because we've tried all the other methods to reduce restraints and we haven't been successful. We need something to show that we're not discriminating against seniors in our hospitals. This is really an issue of seniors more than it is of younger, middle-aged adults. Seniors are at very high risk, and the numbers coming into our hospitals today are increasing.

I've brought copies of these papers. I've also brought a reference list of the most recent articles to do with acute care and restraints that have been done throughout the world. There should be legislation to follow this up.

**Dr William Molloy:** My name is William Molloy. I'm a professor of medicine at McMaster and a geriatrician. I work in acute care hospitals. I work in the Henderson and Hamilton General, I work in the Greater Niagara General Hospital and I work in the Willett Hospital. I work all over the region and I've got fairly extensive experience in this issue. I co-authored the studies with Judy, co-authored the book. I had the opportunity some years ago to be a travelling fellow in Australia and I spent six weeks literally travelling through every geriatric unit in Australia, from Tasmania to Perth, right across the country. I've travelled extensively in Japan, I've travelled extensively in Britain and Ireland. I do a lot of lecturing and a lot of education.

I can tell you that it's embarrassing when our colleagues come from Ireland or Britain or Australia. They come into our hospitals and they shake their heads. They say, "What the hell are you doing here? What's this with restraints?"

This is not new. We have the data. The studies have been done. We did a study in our hospital showing this is not a cost issue. With education—it's a philosophy. It's a state of mind for staff: you don't tie up old people. It doesn't benefit them. It reduces their quality of life. It humiliates them. It reduces their functional state.

Just imagine we were going to do this. Can you imagine if we came in here today and picked one of you at random, we came up and tied you to the chair? Can you imagine what that would feel like? We would put a jacket on, we'd zip it up the back, we'd tie you to a chair and we'd leave you there. Can you imagine how that would feel? That's what a physical restraint is. It would never be accepted in the prison system, it would never be accepted with children, but we're doing it routinely in hospitals.

It's not being done in other countries. In my experience—we have the data to show you—70% of older adults aged over 70 in our hospital, a teaching hospital in Ontario, are in a physical restraint at 10 o'clock in the morning.

**1010**

Now you had Mr Bilodeau in here yesterday. Mr Bilodeau is the CEO of the Sisters of Charity in Ottawa and he is the chair of the Ontario Hospital Association task force. I don't know what Mr Bilodeau told you, but when he walked outside of this room to a press scrum he said, "I don't think it (the use of restraints) is a major issue, personally." This is the chair of the task force of the Ontario Hospital Association who doesn't think it's a major issue. He went on to say, "My guess is the law would just not be respected because there would be no more money to do that." This is not about money. This is not something that costs money. This is a philosophy in our health care system.

In Ireland and Britain you have to order bed sides. In Canada, in Ontario, go into our hospitals, and every bed has a bed side. They're just put up routinely. Do you know what it's like? It's like you're in somebody's house and all of a sudden the father comes in and whips off his belt and starts whacking the children with the belt and you say, "What are you doing?" and he says, "Well, you know, physical punishment is good for children," or whatever. It's just a bad attitude. In Ontario we've tried the policies. This is the OHA, this is our governing body for hospitals, not only showing disdain for the issue by saying it's not important but by saying that even if you pass legislation it will be ignored.

So this is our OHA. You can get the OMA coming in here and saying, "It's not a doctor's issue." It is a doctor's issue. It's everybody's issue in the health care system. If it's my patient, I want to know if somebody is going to tie him up. I don't want a nurse tying up my patients. I have to be involved in that decision. It's a



doctor's issue, a nurse's issue, a physiotherapist's issue, an occupational therapist's issue, a family issue and it's the person's issue. These are frail older adults. They deserve our respect.

Number one, understand, physical restraints have never been shown to be effective. They have never been shown to do the things we think they're doing. They don't reduce falls. They don't do any of those things. We're in a bad habit in Ontario. We've tried everything. Please, please, I beg you. Excuse me, please, I'm asking you. I came to Toronto from Hamilton this morning. I'm asking you. Don't drop the ball. Don't delay; don't fuss; don't fudge; don't put it off. Please, pass this legislation. We need it. Please, I'm asking you. This is not an issue that we can ignore any more. Please pass this legislation.

The only thing we disagree with is the two-hour monitoring. Do it 12 hours. Don't take the doctor out of the loop. If you take the doctor out of the loop, it becomes a nurses' issue. Leave the doctor in the loop. Leave everybody in the loop. Everybody is responsible. Make sure before we put on physical restraints in this province we get a consent form, please, because it's not working, and if you think the OHA is going to do something about it, you just got told nothing's going to happen. Please, don't drop the ball.

Please, pass this legislation, because we are so frustrated with this issue, we who work in geriatrics. I'll just tell you one thing: there are three people training in geriatric medicine in English-speaking Canada next year. That's what the morale of geriatricians is like, because we've not been supported by people like you in these kinds of issues. We're losing ground. Please, put a mark in the sand now and say, "From this point on if you're going to tie somebody up in Ontario you have to document it and you have to do the minimum," because this is a basic human right. These are frail, older adults we're talking about. It's your mother and father, and it's you in a few years down the road. Please, don't drop the ball. Thank you.

We're open for questions.

**The Acting Chair:** Thank you, Dr Molloy and Ms Lever. We have 17, 18 minutes. We have six minutes per caucus and we'll begin questions with the Liberal caucus. Monsieur Lalonde.

**Mr Jean-Marc Lalonde (Glengarry-Prescott-Russell):** Thank you. We'll split the time between the two of us.

Thank you very much for coming down and giving us your statement on this very important issue. I'm really shocked by your comment about Mr Bilodeau and the article in the paper. I happened to be speaking to Mr Bilodeau right after his presentation yesterday, and he agreed with me that most of the physical restraints are due to lack of personnel and lack of funding. I haven't read the press clipping, but I will be reading it pretty soon.

**Dr Molloy:** Can I just respond to that one? This was a study we did in a ward in our hospital, where we did not increase funding. We went in and educated the nurses at the bedside about the use of physical restraints and we

put a policy in. We reduced physical restraints within a couple of weeks by 50%. There was no increase in falls; there was no increase in medication use. Nothing else changed. It was just a shift in philosophy. It's simple.

The things we're talking about are not expensive. We're not talking MRIs and CAT scans. We're talking simple stop signs. We're talking simple creative strategies. It has been done in just about every other health care system in the world, but we're just not doing it in Ontario and it's a disgrace. So Mr Bilodeau should maybe read up on this.

**Mr Lalonde:** I mentioned yesterday that I often visit nursing homes. I have nine in my riding and I've seen those signs that you showed us a while ago. You said that at the beginning you had 70% of the people of 65 or 70 years of age—

**Dr Molloy:** Age 75 and older.

**Mr Lalonde:** —and over who were physically restrained. Then, after six months of surveying, you found out that it came down to about 50%.

**Dr Molloy:** Fifty per cent of that. We reduced it by 50%.

**Mr Lalonde:** What have you done to reduce it down to 50%?

**Dr Molloy:** Education. Judy went in and sat with the nurses and said, "This person is in a physical restraint." The intervention was very interesting. Judy will tell you. It was freaky interesting what happened. We call it the cafeteria effect. Listen to this; it's very interesting.

Judy went in and we gave the nurses a lecture on it and nothing happened. We showed them the policy and nothing happened. When Judy actually went in and stood at the bedside and said, "This is how you get this person out of restraint," physically went through the motions and showed them the assessment and how they did it, then the physical restraints came down. Very interestingly, in the ward that was the control—we had one ward where we did the intervention and the other ward was the control that we were following—it came down simultaneously in the other ward. As soon as the nurses started talking to each other, they taught each other in the same hospital, and restraints came down even where we weren't doing the intervention. Even nurses talking to each other in the cafeteria could teach each other how to reduce the physical restraints. This is not a cost issue, honestly.

The other thing—

**Mr Lalonde:** Just quickly. I have another one before Mrs Di Cocco—

**Dr Molloy:** Even if it were a cost issue, would it be OK to tie up old people to save money?

**Mr Lalonde:** Would you say at the present that we need to meet with organized labour to have more access to visitors? Because going through the documentation we received before we started this public hearing, I read that places that have a lot of visitors tend to reduce the number of times that you have to physically restrain the residents of different nursing homes.

I remember that at one time organized labour didn't like to have too many visitors who would help the nurses



or staff to occupy the patients. Would you say that at times we need to sit down with organized labour and discuss those matters with them?

**Ms Lever:** Those kinds of matters are discussed at a local level on a regular basis. In the hospitals I work in, I don't think there is any issue with people coming in to provide recreation, to provide a church service, to provide other things that will keep the persons busy and out of trouble. In fact, we use family members quite extensively, as long as we're able to, to sit with people. The more we can get them to do that, to use those kinds of interventions, the less times that we might need to have someone in a restraint.

Some people think that when you put somebody in restraint, it releases the staff to go off and do other things. But I'm here to tell you that almost all of the coroners' cases involved with restraints are because restraints were used, not because they were not used. People get strangled. Restraints are not safe. There is an attitude out there that if we put the person in restraints, we can leave them for three or four hours and not bother coming back to them. These people strangle themselves, fall over backwards in the chair and damage themselves quite badly. They become incontinent, they get pressure sores, they get all kinds of things because of lack of attention.

If we just let them get up and move around and take—I mean, there is a risk to everything that we do in life. If we walk from that building to this building across the road, we take the risk that we could have a fall on some ice on the road or we could get run over by a car that comes around the corner too fast and we didn't see them.

1020

When we get people like that in hospitals, we tend to think we can protect them from every kind of misadventure that would be possible. We have to remember that old people at home, out in the community, fall at a tremendous rate. It's not going to be any different when they come into hospital. We can't prevent people from having injuries. All we can do is have the safest kind of environment we can and then let people take their risks.

You'd rather be told you can go ahead and cross the road if you want to, not let somebody tell you, "Oh no, don't cross the road. You might get hit." It's just the same as telling an old person, "Don't get up out of the chair. You might fall."

**Dr Molloy:** It's an issue of consent. It's an issue of what you choose to do. Do you choose to be tied into a chair in case you might fall, or do you choose to say, "Let me get up and walk. I recognize I can fall. It's OK, it's my choice or my family's choice"? That's all it is. And guess what? Most people would choose to take the risk of falling because it keeps them active, rather than tying them up in a chair. Studies show that by tying people up in chairs, you reduce their activity, you reduce their function, you increase incontinence, you increase depression, you increase frustration and you take away their dignity.

If you never want to have an accident, then stay in that chair for the rest of your life, because you're never going

to fall. None of us would choose it, but the hospital, because of some weird kind of system, ties people up to protect them. In fact, it's counterproductive.

**The Acting Chair:** Thank you. We've used up the Liberal caucus time.

**Ms Frances Lankin (Beaches-East York):** I have a number of questions that flow from your presentation. First of all let me express, along with the rest of the committee, our appreciation of your coming and presenting to us today.

Yesterday in the Ontario Hospital Association presentation they pointed out that one of the problems in assessing a bill such as Bill 135 is that we lack data about the use of restraints in acute care hospitals in Ontario.

I have a couple of questions with respect to that. You have a study that was done in an acute care setting that is shocking, as far as I'm concerned, in the numbers that were revealed. Did the OHA take that information? Did it influence their policy or their procedures? Did they do anything with your study at all?

**Dr Molloy:** Ms Lankin, first of all we don't lack data. They don't know the data. There's a difference. The data are out there. Anybody with eyes can see it. Walk through our hospitals, look at the bedsides, look at the old people in restraints, look at the people in geri-chairs tied to railings, look at them tied with sheets by their groin; it's out there. The fact that they don't have data tells you the complete disregard they have for the issue. Why haven't they got data? Is that our problem? We have data; they're published. They're published in the Canadian journal.

**Ms Lankin:** Did those published data have any influence on hospital policy at the Ontario Hospital Association level?

**Dr Molloy:** They never contacted us. Nobody ever was interested. This Mr Bilodeau—look at it. It's not a major issue and it's going to be cost—I mean, this shows a complete lack of knowledge about this issue. These comments are frightening, actually.

**Ms Lankin:** One of the other things we heard is that there are some sectors where we do have data being collected, in the long-term-care sector, for example, and in the chronic care sector. The Ontario Hospital Association pointed out the statistics that are collected there show a decrease in the use of restraints in the chronic care hospital sector. It wasn't said, but the committee is left to wonder, would there be a parallel decrease in the use of restraints in the acute care sector over the same period of time?

**Dr Molloy:** The reason there's a decrease in use in long-term care is because there was legislation. The reason there was a decrease in use in the States was because of OBRA. Other countries have shown that legislation will reduce the incidence. Either you have it in your culture, in your philosophy, in your health care system or you have to legislate it. That's the reason it happened in the States, and we need it in the hospitals. That's why we're telling you, please don't drop the ball. Please don't defer this, please don't put this off for



another five years, because in five years' time I'm not coming back. None of us is coming back. You won't have geriatricians.

This is a big issue for us. It's a fundamental human rights issue for older adults. Please don't drop it. The reason you have to get legislation is because we have failed with every other thing we've tried. There's no teeth to anything. It frightens me that even before you pass your legislation, the head of the OHA task force is telling you they're going to ignore it anyway. What complete disregard for the process we're going through. That's really not acceptable. This is what you're dealing with. You're going to tell me that these people are going to go ahead and follow up with this when they tell you they're even going to ignore legislation.

**Ms Lankin:** Dr Molloy, you made reference to the work you've done over the years and extensive travel in Japan, Australia and the United Kingdom. We heard from presenters yesterday, the Ontario PsychoGeriatric Association, Dr Janice Lessard and others, that in terms of international comparisons in Canada—not just Ontario but in Canada—we restrain patients at a much higher rate than the United States, and the United States is worse than the UK. I know one of the committee members yesterday asked for a bit more information about those comparisons. Based on your experience, can you tell me what the state of use of restraints is in other international jurisdictions?

**Dr Molloy:** I can tell you that in Ireland they have to request bed sides. If you want to put up a bed side, you have to go and request it.

**Ms Lankin:** Are these bed rails, when you say “bed sides”?

**Dr Molloy:** Bed rails, yes, the bed sides. In Ontario they're routine on every bed. Every time I come to see an old person—I can do this in my sleep—I have to put down the bed sides. Please, before you do this, walk into a hospital and look at all the old people sitting with the bed sides up. They're restraints. They can't get out. They try it crawl out the bottom and they fall. Nurses just routinely put up bed sides and then they're tied in. This was 10 o'clock in the morning when we did our study. At night, many of these people are tied in, but it's not everywhere; it's in pockets. Some hospitals, some units have no restraints. It depends on the people.

**Ms Lankin:** Could you tell me about what happens in the UK?

**Dr Molloy:** In Britain this doesn't happen.

**The Acting Chair:** Thank you, Ms Lankin. Government caucus.

**Dr Molloy:** It doesn't happen in Britain. It doesn't happen in Ireland. It doesn't happen in Australia. It just doesn't happen. They just don't use them. If you went into a British hospital, an Irish hospital or an Australia hospital looking for restraints, you couldn't find one.

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** Dr Molloy, can I ask you a couple of questions? Having been a graduate of McMaster University, I can understand a little bit about the medical community. My

nephew went there and now he's at the U of T medical school. McMaster University is an outstanding institution.

**Dr Molloy:** I want to ask you a few questions about the role of a doctor in this legislation. You've read this bill. Under subsection (3) there are situations where the restraint can be used, and you've made a big point of the consent. In this process, the consent to use restraint is given by the patient or a substitute decision-maker. Also, one of the criteria is that the use of restraint is ordered in writing by a physician. Is there a situation where there's a dispute in here if there's no consent given but the doctor wants that restraint to be put forth? How do you deal with that in a situation where there is one exception? It says where it's “necessary to prevent serious bodily injury to the patient or to others,” that's one exception. It doesn't say who would make the decision, but I would presume it would be the physician who would make that decision.

**Dr Molloy:** We do it routinely in the health care system. If somebody gets acutely ill, we give emergency treatment. You could see where a physical restraint could be used as an emergency treatment, and it could be applied by a nurse or a doctor. That could be easily written into policy, that if the doctor's not available or can't come and do the assessment, the nurse could do it and then, as soon as possible, the doctor would become involved. These are technical issues. That could be done routinely, and I don't think anybody would argue with that. But I think the long-term, routine use of physical restraints is what we're getting at. Nobody argues that in an acute crisis, an acute delirium, an acute problem full stop—a person has a broken hip or someone wants to get out of bed—we can use physical restraints. We're not being unrealistic here. The routine use of physical restraints in our acute care system is what we're trying to get at.

**Mr Tascona:** Yes. That point really struck me when you talked about the situation of 10 o'clock onward where, if people are aged 70 and older, the physical restraints go on. Why is that happening? What's the philosophy behind that? You experienced it. I know this is a philosophy issue, because we heard that from the OHA too, in terms of clinical care, in terms of how you want to deal with this issue.

1030

**Dr Molloy:** I'll let Judy answer the second bit because she talks for nurses, but let me just tell you what it used to look like in some of our acute care wards. In our hospital we have really cleaned up our act now because of the work of Judy and committees that have really tried to do it. We used to go into the wards at 10 o'clock in the morning. Every old person is getting up out of bed. They are in the bed with the Posey on at night. They are literally tied into the bed and they've got the double bed sides up. In the morning, they take off the Posey restraint, which is the physical jacket and the ties, they take down the bed sides and they put them in the geri-chair. They are locked in so they can't get out of the geri-chair, and if they try to slide down, they get a sheet and tie them by



the crotch to the thing so they can't slip down. Then the old person starts shaking the geri-chair. You've seen it, right? They are shaking the geri-chair. So what they do now is tie the geri-chair to the railing. You literally go into the ward and there's a lineup of people in geri-chairs tied by sheets to the railing. I've seen those literally in the last couple of months.

**Mr Tascona:** The question is, why are they doing that?

**Dr Molloy:** Because the nurses think this is normal care for old people.

**Mr Tascona:** What kind of care are they providing?

**Dr Molloy:** That's what's happening in our hospitals. That's what we're telling you. Judy could maybe comment on why nurses do this. Once you change their practice, they stop doing it. What we're telling you is, we've tried every way we can to stop it, but Judy will tell you why the nurses do it.

**Mr Tascona:** Judy, on that, you indicated you have a book. Are you going to provide that to the committee? Are you in a position to provide that to the committee?

**Dr Molloy:** We're going to leave it with you.

**Mr Tascona:** The other thing is, how is that distributed?

**Ms Lever:** People buy that. It's distributed if I or Dr Molloy go and do talks, wherever we're going to go. We both lecture quite extensively across Ontario; Dr Molloy certainly more than I do. It was published—a little article in this, *Untie the Elderly*. It's an American publication through Kendal Corp, who advertise this, and as a result of that advertisement, I got a lot of people from the US writing in to get booklets from me.

**Mr Tascona:** The availability is essentially through you or—

**Dr Molloy:** We did 1,000 copies about five or six years ago. We still have about 100 left. We're hoping to sell off the last hundred to do a next edition, because the next edition hopefully will have this legislation and the consent forms and the stuff we've learned in between. The money we get from it goes into a hospital fund, an education fund. How much do you have in the fund?

**Ms Lever:** I have about \$1,500 in the fund now—

**Dr Molloy:** —to pay for the next edition.

**Ms Lever:** —to purchase things like these, to use for demonstration purposes and to go ahead with lectures. Plus, it will be the foundation for the next publication, which should probably be from a better press. This was McMaster press, so it is available through McMaster press, but in limited numbers.

**Mr Tascona:** Can I ask another—

**The Acting Chair:** I'm sorry, that's all the time we have.

**Mr Tascona:** Just one final comment: I appreciate the comments you're making that this is a philosophical issue in terms of clinical care; it's not a cost issue. We heard that yesterday too.

**Dr Molloy:** It's not.

**The Acting Chair:** Thank you, Dr Molloy and Ms Lever.

## ONTARIO MEDICAL ASSOCIATION

**The Acting Chair:** Our next presenters are from the Ontario Medical Association. Please identify yourself for the purposes of Hansard. You have 15 minutes in which to make your presentation. You can use all or any part of it. If there is any time left over, we will open the floor to questions from the caucuses.

**Dr Albert Schumacher:** Good morning. I am Albert Schumacher. I'm president of the Ontario Medical Association and a family physician from Windsor. With me is Barb LeBlanc, from the OMA staff, who is here to assist me during the question and answer portion of this morning's presentation.

First of all, I'd like to commend Ms Lankin for raising this very important quality-of-care issue. Although we've come a long way in clinical practice in terms of dealing directly and openly with issues around patient constraint or patient restraint, it's helpful to revisit our approach from time to time in order to ensure that we're providing the best possible care for our patients and ensure a safe hospital environment for all patients, staff and visitors.

The OMA wishes to acknowledge up front the work that has been done by the Registered Nurses Association of Ontario and the Ontario Hospital Association since the introduction of this bill in November of last year. The OMA has been in close contact with each of these organizations and supports the general approaches being taken to improve our current practice regarding the restraints and the best possible practices in the future in this area.

In turning to the specifics of the legislation, I'd like to emphasize to the committee that the OMA strongly supports the drive to improve patient care underlying the proposed amendments, but we have a number of concerns about the implications of Bill 135 as it is drafted in terms of its effect on hospital care and medical practice.

In canvassing physicians' input for my remarks today, it became evident there was no clear consensus around medical versus non-medical restraint under the bill as written, and it would create some ambiguity in terms of actual practice. If I understand the thrust of Bill 135 correctly, I believe it would represent a significant change in practice for many hospitals. Based upon the input that the OMA has received, it seems to me we must take a more comprehensive approach to the restraint issue, which captures various types of restraints used in various circumstances. We need to start with clear definitions of both mechanical and chemical restraint, in addition to distinguishing between the use of restraints versus safety devices, in order to ensure that the work we are doing is meaningful in actual practice.

Traditionally, physicians' main role relating to patient restraints involves those restraints used for medical purposes. The use of non-medical restraint, where it occurs, is largely a matter left to the professional judgment of the registered nurses within the confines of the applicable hospital policies and procedures in each institution. In some hospitals, however, there is no distinction between medical and non-medical restraint. Unlike nurses, who



are on the floor on a constant basis, physicians are not always on the floor, let alone in the hospital.

Given that the type of restraint addressed in Bill 135 is, by definition, unplanned and situational, it is more likely than not that a physician will not be on hand to personally assess the situation and order the restraint. In addition, the requirement that the restraint be ordered in writing implies that the written order must be in place before the patient can be restrained. If so, it is totally impractical. The OMA believes that legislation cannot substitute for clinical judgment and that explicit hospital policies outlining least-possible-restraints options would better serve Ontario and move towards a restraint-free hospital model.

1040

Bill 135 requires that a restraint be applied only by a person who is trained to do so and is also trained to identify and resolve situations that may otherwise require the use of a restraint. The OMA agrees that those who apply restraints must be trained and be able to do so. It is unclear, however, that the person applying the restraint would necessarily be trained to assess the alternatives to the restraint that are available and appropriate. The OMA believes that these two skill sets should be delinked.

Bill 135 states that restraints may be used for a maximum of two hours, unless a physician reassesses the patient and he or she gives a new written order. This would necessitate a direct, face-to-face encounter between the patient and the physician, according to the rules relating to assessment under the OHIP schedule of benefits. The burden upon physicians to come to the hospital every two hours, day or night, is unreasonable and has been the subject of negative comment by virtually every physician who has reviewed Bill 135. The OMA recommends that this section be reconsidered.

The bill further requires that the physician chart the order for the restraint and the types of less restrictive restraints considered by the physician and the reasons they were not specified in the order. This requirement is not consistent with accepted medical charting procedures. One of the most important things that a physician does in his or her daily practice is to make decisions about diagnosis and treatment. This decision-making is the essence of what is taught in medical school and what is required for good patient care. It is inappropriate and unrealistic, however, for physicians to be mandated to chart all of the considered but discarded options concerning care. This would make medical charting overly time-consuming and result in charts that are incomprehensible, which would ultimately have a negative impact on patient care. The OMA recommends that this section also be reconsidered.

Bill 135 requires each public hospital to have written policies and procedures with respect to restraint, to post them in all rooms and provide them to each patient on admission. The OMA believes that this is reasonable to mandate, that the board of trustees of every hospital be required to ensure that it has policies and procedures with respect to the use of restraints. We recommend that such

a clause be added to regulation 965 under the Public Hospitals Act.

The OMA suggests that the section relating to dissemination of policy and procedures be rewritten to state that, "Every hospital shall provide a copy of its policies and procedures governing the use of restraints to any person upon request." This is a more practical approach than that outlined in Bill 135 and would also allow hospitals more flexibility with respect to communication on the subject. For example, some hospitals may wish to incorporate a comment relating to restraints in their patient bill of rights or in other standardized patient hand-outs.

In summary, the OMA believes that the issues relating to the use of restraints are more appropriately dealt with by hospitals and the professionals involved in their use, including nurses and doctors, than in legislation. We respectfully suggest, therefore, that the only legislative amendments the Public Hospitals Act requires at this time are an amendment to regulation 965 of the act to require each hospital to have a policy and procedures with respect to the use of restraints and a second clause that requires hospitals to make the policy available to those who wish to see it.

Again, the OMA does not want to minimize the need to address the issues that have been raised by Ms Lankin in Bill 135. On the contrary, we want to clearly support the development and the enforcement of comprehensive least-restraint policies in hospitals, along with the necessary education of the relevant professional staff.

I thank you very much for your attention. Barb and I would be pleased to use our remaining time to answer any of your questions.

**The Acting Chair:** We have about two or two and a half minutes for each caucus, beginning with Ms Lankin.

**Ms Lankin:** Thank you, Dr Schumacher. I appreciate you being here today on behalf of the OMA. I want to say first of all that a number of people have talked about the issue of the two-hour reassessment and I think there are some practical concerns that need to be addressed. I do think, however, we have to come to some decision about the question of accountability for ongoing use of restraints. One of the things we've heard in evidence is that too often when people are restrained for a particular situational occurrence, the restraints are left on. Part of that is policy and education, but there are also issues of accountability.

In your presentation, you talk about the non-medical restraint and where it occurs, and that it's largely left to the professional judgment of the registered nurse. In fact, much of what I've heard—not in testimony here but in work that I did in preparation for the bill—is when an elderly and perhaps frail individual presents himself at a hospital through emergency, what is pretty standard is a doctor's standing order on a chart of PRN: physical restraint if necessary. That follows that person through the system at that point in time. In fact, the nurses look to the chart to find if there is a PRN. There's actually a medical order that is being written, but by an emergency



room physician who isn't there and involved in the on-going care.

My question about it simply being medical versus non-medical is, what happens once a patient is restrained? What we've heard is that there's increased agitation, it leads to increased depression, to incontinence, to pressure sores, to increased use of medication of sedatives, increased cognitive impairment, increased motor skills impairment—the iatrogenic consequences of the use of restraints. Those are medical concerns that flow from the use of restraints. So to take the doctor, as we just heard in the previous presentation, out of the loop becomes very problematic in terms of the ongoing medical care of that patient. Could you address that for us?

**Dr Schumacher:** Sure. Barb, would you like to?

**Ms Barb LeBlanc:** You're right. A number of our physicians have raised that very issue. But the thing we were trying to get to here is that we probably need to talk about all the aspects of restraints. What we found, in parsing them out, non-medical versus medical, was that some hospitals handle them as a whole and others do it in the ways you've talked about, with the PRN order, and still others use nursing protocols. So we agree that we have to look at restraints taken as a whole. We need to consider their physical and medical impacts and we need to ensure that the entire team is part of the decision-making—nurses and doctors.

**Mr Raminder Gill (Bramalea-Gore-Malton-Springdale):** Thank you, Dr Schumacher, for being here this morning. One of the things that I think Dr Molloy implied earlier is that because of the restraint problems, a lot of people are getting out of geriatric practice or they're not going to be studying geriatrics any more. Do you have any comment on that?

**Dr Schumacher:** We don't have enough geriatricians with that specialty and interest, and I think that goes along with many of our manpower and human resources problems in the province. Certainly part of that is that we need more training spots and we need to encourage graduates to look in that area, especially with our aging population.

I can't specifically comment on the ebb and flow in that specialty today. I wasn't prepared to do that and I can't confirm his numbers. But certainly working with the elderly is difficult. Many of our other patients are difficult as well. I'm not sure where we are in that particular realm of the crisis.

**Mr Gill:** In your opinion, the restraint side of things is not affecting the so-called specialization, or do you think it might have?

**Dr Schumacher:** I think that the restraint problem is a significant problem in hospitals. Some institutions, as we heard, I think deal better with it than others. Certainly having a preprinted order sheet like on the tonsillectomy order sheet and having restraints on there is not in anyone's interests. I certainly agree that where you need to have an order for a restraint, especially in an acute care facility, it needs to be evaluated. Then, not necessarily in two hours but certainly the next day, it should be on the

list to see what you can do to undo this and make other arrangements. So yes, it is a problem.

We just heard some of the solutions that have been tried in local hospitals, and certainly that effort needs to be there. As our population ages and as the people who are now left in hospital, as we do more as outpatients, are sicker, are frailer and have more complex problems, the issues surrounding confusion, whether transient or longer-term, are going to become a greater problem, especially for those hospitalized people.

**Ms LeBlanc:** There's one other thing as well. As the psychiatric hospitals begin to shift and more of that patient population moves into the general hospitals, certainly issues around restraint will be relative to them as well.

**The Acting Chair:** Thank you. We'll move to the Liberal caucus.

1050

**Ms Caroline Di Cocco (Sarnia-Lambton):** Just two quick questions. Can you give me a sense of what non-medical restraint is considered to be? Secondly, in the medical profession, how much time is spent in the actual discussion of this application of restraints or the whole issue of when it's used and why it's used and all of that? How much time is allotted in the education of the medical profession when it comes to this issue?

**Dr Schumacher:** I can only answer on a personal basis when I think back to medical school. I can remember spending a morning talking about restraining patients. Most of that dealt with the acute psychiatric patient, someone who was psychotic or hallucinating and delusional, in the proper management of them, to protect them and the staff and so forth. I would have to say, from memory, that's where most of it came. I can't comment on the current curricula.

To go back, on the issue of medical versus non-medical, when I first read it, I thought that non-medical must mean the surgical stuff we do in the OR when we strap someone to the table so they don't fall off when they're unconscious. So I think we need to define that better, because even there, there is some uncertainty about what our terminology is. I guess you could consider the bed rails a restraint, but in the unconscious patient, somebody who is coming out of anaesthetic, we restrain them so they don't pull out their tube or we tie their hand down so they don't pull out an IV line. There are a lot of those kinds of things that go along with certain aspects of operative and critical care which I don't think we're necessarily addressing here. I'm not the best person to define that.

**The Acting Chair:** Dr Schumacher and Ms LeBlanc, thank you very much for your presentation this morning.

#### REGIONAL GERIATRIC PROGRAMS OF ONTARIO

**The Acting Chair:** We now move to our next presenters, the Regional Geriatric Programs of Ontario. Good morning. Would you please identify yourself for



the purposes of Hansard. You have 15 minutes in which to make your presentation. You can use any or all of it. If there is any time left over at the end, we will move to the three caucuses to ask questions.

**Dr Rory Fisher:** Thank you, Mr Chair. I am Rory Fisher. I am a geriatrician. I'm the chair of the Regional Geriatric Programs of Ontario. These are based at the five health science centres and they provide specialized geriatric services specifically for the frail elderly. Willie Molloy, my colleague, is the acting director of the Hamilton regional geriatric program. It's a little difficult following in Willie's footsteps. I think Willie has kissed the Blarney stone, and you have seen evidence of that.

I would like to make some comments generally about things, and look at the legislation specifically by putting it in the context of the overall situation.

I would like to start with a quotation from one of my colleagues, Don Redelmeier, in an article in the Canadian Medical Association Journal a week ago: "The hardest problems to solve in medicine are the ones where no one recognizes that anything is wrong." I think when it comes to the management of the frail elderly, that is the issue with our health care system at the moment. Our health care system really is predicated on the needs of providers and not on the needs so much of the clients. Now, with the demographics that we're facing of an aging population, the utilization in the health care system is focused more and more on the frail elderly, and that is going to increase both with the demographics and with the changing health care delivery system allowing us to do much more outside of the acute hospitals. It's these frail elderly who are the target population for restraints, and I think it's the tip of the iceberg of the problem that we're facing.

The population, as you know, is going to go up from 12% over 65 to 22% by the year 2041. The population that is increasing most rapidly is the old old, those over the age of 85. It is this population that has the highest incidence of cognitive impairment. The problems that we're facing in our acute hospitals are the frail elderly becoming confused from the acute problems that bring them into hospital. Then they are being restrained to provide, often, the treatment that was mentioned by my colleague from the OMA: to give them intravenous fluids or to put tubes in and things of that nature. So we really need to change the focus to prevent using some of these interventions and to manage them differently medically, and therefore decrease the need for the interventions which in turn lead to the people being restrained.

When it comes to this aging population, it's undoubtedly the single most significant challenge facing our health care system, and we're not approaching it. Obviously there has been a decrease in funding for our health care system, but just to replace that, doing what we've been doing in the past, isn't going to meet the changing needs of the population in the future. In the same way that wars are too important to be left to generals, I think the health care system is too important to be left just to health care providers.

I know many of my colleagues are concerned about legislation to change our practice. In the best of worlds, we would hope that we would take the lead and make the changes ourselves, but we haven't seen this happen. We see that most of the medical and hospital establishment is very conservative and, like the generals, usually fight the last wars. Our medical and hospital establishment is still working in the past on a different paradigm of health care delivery and they haven't focused, to change, on the needs of the patients they're dealing with now. That does need a sea change. We have to focus on making our hospitals friendly for the frail elderly, not friendly to the health care providers. In making them friendly for the elderly and introducing measures that would be preventive of delirium, we would decrease the need for restraints.

This can be done readily. There have been studies in the States by Inoye, who, looking at the prevention of delirium, was able to do that. If you prevent delirium, you'll prevent the need for restraints. Currently, at Sunnybrook we're looking at a model to try to develop processes to decrease the instance of delirium, and they have a care plan at the University of Alberta where we want to work with them to look at this. If you prevent this by developing the friendly environment, you will have the frail elderly more active. They'll be functionally more able, they'll develop fewer falls, less incontinence, as well as less delirium.

Unfortunately, our acute hospital is a hostile environment for frail elderly. There are studies which show a decrease in abilities of the elderly by just being in hospital, by the environment that we develop, which is focused on treating the disease, not the patient. So you may immobilize the patient and restrain them so you can get antibiotics into them, but by doing that you engender and induce the side effects and problems that result from restraints. So our whole focus on disease, rather than patients, fits into this concept of restraints.

Coming from a British background, it was a great shock coming to Canada 30 years ago. Some of my other colleagues, British geriatricians who came here, used to write papers and give presentations at that time, "Free in Britain, Restrained in Canada." It's a great regret that 30 years later, things have not got any better. Indeed, one sees them getting worse. Undoubtedly, the pressures on our health care system have really increased in recent years. I think that some of the effects of that are related to the use of restraints.

With regard to some of the specifics, I think the issues regarding the physician involvement are important, and obviously they have to be involved in decisions that are related to people who are their responsibility at that time. I think we have to be conscious of the practicalities that the OMA pointed out.

**1100**

At Sunnybrook we have had a good system of least restraint in action for some years and physicians aren't involved in the initiation of that, so that system has worked. Another thing that has happened at Sunnybrook



has been that in moving to the least restraints they have moved to bring many sitters to come in and sit with the disturbed patient. This has been helpful in decreasing use of restraints, but it has also been very costly. So this humane intervention has had an adverse effect on the hospital's budget, which in turn has led to this initiative to look at getting at the cores of these restraints and trying to decrease them.

So, Mr Chairman, I would put this into an overall context. We are looking at a major democratic change. Our hospitals and our medical establishment have not altered their approach and still want to go on doing things in the same old way, and that's not going to work. I think we are going to need to be called to account by the Legislature as to how we're spending the taxpayers' dollars. In the United States that has had to take place, and maybe it will have to take place and this is just the first step of some other interventions to make us refocus on the needs of the frail elderly.

Thank you, Mr Chairman.

**The Acting Chair:** We have a little over a minute for each caucus. We'll begin with the government caucus.

**Mr Joseph Spina (Brampton Centre):** Thank you, Dr Fisher, for taking the time today to give us your opinions, your perspectives. The concurrent theme seems to be that, I gather, a lot of the issues consistently be one of attitude and loose policies, inconsistent policies. Like Ms Lankin's, my parents were in the same situation, with my late dad a couple of years ago and with my mother just most recently. Fortunately, they were in a northern Ontario hospital which displayed, I think, a very fair and consistent and compassionate policy.

Your colleague Dr Molloy indicated that there are few geriatricians at this point who are trying to deal with the situation and, as you clearly indicated, with the increasing demographics and the aging baby boom population, of course, this will put a far greater amount of pressure on these issues. Other GPs or GPs and specialists versus geriatricians, can that be resolved? Can legislation really change an attitude, I guess, is perhaps a more general question, and would that somehow help in having more geriatricians come on board over time if there was a legislated policy?

**The Acting Chair:** Mr Spina, it might help if we keep our questions short considering we have very little time. You've used up all your time for questioning. We move to the Liberal caucus, Monsieur Lalonde.

**Ms Lankin:** I just wonder, given the fact that Dr Fisher has come to be with us and to present his expertise today and given that the next presentation was cancelled, if we might extend this time just a little bit to allow him to answer Mr Spina's question?

**The Acting Chair:** If all the caucuses agree I think we can do that.

**Interjection:** Agreed.

**Dr Fisher:** The first question regarding the numbers of geriatricians: there are currently 68 in the province of Ontario. Our estimated current need is 170 and that's

conservative. This doesn't take into account the aging population in future.

I think they're two separate issues. One is the need to increase the number of geriatricians and the other team members for specialized geriatric services, and we certainly need to do that.

There was an expert panel forum that met in November with stakeholders from around the province, called by the policy division of the Ministry of Health and Long-Term Care. I understand recommendations from that regarding policy for specialized geriatric services for the province have gone forward to cabinet, so some resolution of that would be helpful.

There is the second issue of the services for all the elderly, as distinct from specialized geriatric services, and your point regarding family physicians and other health professionals is very well taken. We have to advance on two fronts: one is to provide the support and infrastructure and funding for the development of specialized geriatric services with geriatricians and others; and second is to change the whole environment of all health care professionals to attune them, educate them and put them in an environment which will focus on the needs of the frail elderly. We can do that by better training at an undergraduate level and also at a post-graduate level.

It is going to be very difficult, as Dr Molloy said, to attract physicians to look after the frail and elderly. If we have 20,000 more long-term-care beds put in place, I think it's going to be very, very difficult to entice physicians to provide the care to those beds.

**Mr Lalonde:** Thank you, Dr Fisher, for giving some of your time to explain to us at what point we are. It's getting to be very scary when you say that by the year so-and-so probably 22% of the people are going to be restrained, if I go with the average age that we'll have at that time.

If I just look at yesterday and one of the statements we had about the 80-year-old lady in Mississauga who had to be physically restrained, we tend to see that more and more of those people are going to be physically restrained because families are getting smaller, people are moving to Ontario with fewer relatives than we used to have, so we have no one to take care of those elderly in hospitals. It's getting to be scary—for myself, probably 15 years from now—the fact that we politicians know the rule that we might end up being physically tied up to a rail because we will not accept the restrictions that are going to be applied to us.

Could you tell us today what should be done immediately to try and eliminate or reduce the number of physical restraints that we see in hospitals?

**Dr Fisher:** Certainly this legislation would lead the way. I think we have to ensure that the hospitals develop standards and policies which will minimize the use of restraints, but also go further to introduce educational approaches that will minimize the need. In looking at the aging population, I don't think we necessarily have to be pessimistic. I think we're going to see a major part of the



aging population that is going to be physically and mentally much healthier than the aging population in the past. We have the paradox, though, that we will have this minority of people who will be disabled physically and mentally who will require the support system, hopefully in the community rather than in hospitals.

I think we have to ensure that our hospitals are suitably designed and function to minimize the use of restraints and maximize the functionability of the frail elderly in those circumstances.

**Ms Lankin:** Thank you, Dr Fisher. It's delightful to see you again and I appreciate your coming here today. I am very concerned about the issues you raised with respect to the lack of professionalized geriatric services in the province and the lack of geriatricians and specialists. I had the occasion last fall in health estimates to speak rather extensively with the minister about this. I'm quite sure that the minister of the day recognized the concern and, through the expert panel that you referred to and some other measures that were implemented, was beginning to look at this. I assure you that I will follow up with and have a conversation with the new Minister of Health, because I think there is a looming crisis. I find it just horrifying. I know other members of the committee would love it if some time we had an opportunity to look just at this issue, because I think there is a major public policy question there.

1110

Specifically on the bill, I want to assure you that some of the details of the bill I recognize require amendment. I have sought the opportunity to work with the ministry, if the ministry in the end is accepting of the bill, to find the appropriate and acceptable wording.

I want to ask you to respond to some things that have been said, in particular by the Ontario Hospital Association but also by others. Mr Bilodeau, who presented yesterday, was quoted in the newspaper as having said to the media that he didn't see the use of restraints in acute care hospitals as a major problem. He talked before us about a lack of data, an inability to really know whether restraint use was common or increasing or decreasing. He also referred to the fact that where we do have data in chronic care hospitals, the numbers show that the use of restraints is decreasing. Others have told us that is because legislation was put in place governing long-term-care facilities and that, while you can't legislate attitude, you can legislate behaviour and often, through education that is accompanying that forced change in behaviour, attitudes will change. Could you tell us, is this a problem in our acute care hospitals? Are restraints being used or, as is my view, overused? Could you comment on the state of affairs?

**Dr Fisher:** I think there's no question that they are being overused. I think legislation introduced in the United States has led to a decrease in the utilization of restraints in acute care facilities and I would see it doing the same in this province. Again, one would prefer, in the best of all worlds, to do things differently. But if legislation is the way to start the change, then I think it would

be better for the frail elderly of this province if we had legislation.

**The Acting Chair:** Thank you, Dr Fisher.

## REGISTERED NURSES ASSOCIATION OF ONTARIO

**The Acting Chair:** Our next presenter will be the Registered Nurses Association of Ontario. You can begin any time.

**Mrs Doris Grinspun:** My name is Doris Grinspun and I'm the executive director of the Registered Nurses Association of Ontario. We are a professional association representing a broad spectrum of over 15,000 registered nurses who work in a variety of settings throughout the health care system. We welcome the opportunity to speak with you regarding Bill 135, An Act to amend the Public Hospitals Act to regulate the use of restraints that are not part of medical treatment.

The issue of restraints use has serious implications for patient rights and patient safety and is one in which registered nurses have a great deal of involvement and concern.

It is clear that the legislation proposed by Ms Lankin was structured with the intent to protect patients by setting very strict requirements for restraints use in hospitals. This is laudable. We applaud the intent of the legislation and the goal Ms Lankin has in mind. We support the intent of this proposed legislation and we commend Ms Lankin for bringing attention to this very critical health care issue.

It is the opinion of RNAO that the more effective legislative approach will be an amendment to regulation 965 of the Public Hospitals Act mandating hospitals to have a least-restraint policy. This approach will ensure that restraints in Ontario are used as a last resort and only to protect a patient's safety or the safety of others. It will also ensure that when restraints are necessary, the type or length of use will be the least restrictive possible.

The most effective way to facilitate that option of a least-restraint policy in all hospital settings is by ensuring the policy is grounded in evidence. Thus, it is RNAO's recommendation that such a policy be based on best-practice guidelines that have been developed through an exhaustive research review and the input of a broad range of experts in the field. It is also critical that all best-practice guidelines have directions for the practice setting integrated into the guideline itself. Only in this way will policies based on best-practice guidelines be actually utilized and sustainable.

The decision to place restraints on a patient is not made easily and in fact it is in general made by a nurse. It is a complex decision in which the health care provider must weigh the balance between patient rights, patient autonomy and patient safety. The decision-making regarding the use of restraints within the hospital sector lies squarely within the registered nurse's scope of practice, and thus we take full accountability and responsibility



both ethically and otherwise for the issue and we take it very seriously.

RNAO very strongly believes that restraints must never be used to resolve system and human resources failures—for example, staffing shortages—nor should restraints ever be used for the convenience of the care provider. Adequate staffing, appropriate skill levels and educational support—for example, for alternatives to the use of restraints—are essential to high-quality care and are, as such, critical components of any best-practice guideline development.

Let me refer to three specific issues that we are especially putting emphasis on. One is accountability, the second is the decision regarding use of restraints and the fact that it lies within the nursing scope of practice, and the third is the utilization of the best-practice guideline as the basis for a least-restraint policy.

**Accountability:** We are strongly supportive of the underlying theme of accountability evident in the proposed legislation. Accountability to those who are receiving care and their families must be at the core of any legislative initiative. There are several types of accountability that must be considered in order to ensure that the use of restraints optimizes patient safety and well-being.

First of all, the Ministry of Health and Long-Term Care is accountable for ensuring that adequate funding flows to the delivery of care within our health care system. The ministry must also ensure the development and implementation of standards that will enable all Ontario residents to receive high-quality care. The support shown by the Ministry of Health for the best-practice guideline development for nursing in several clinical areas is an example of this accountability. I'm referring here to the best-practice guideline project initiative funded by MOH to RNAO, and I will speak more about that later.

The hospital and other health care agencies—because we do not think this issue is only a problem in the hospital sector—should be accountable for implementing a least-restraint best-practice policy based on best-practice guidelines in their facilities, as well as ensuring adequate staffing to deliver high-quality and safe patient care so that restraints indeed are never used as a replacement for staffing.

The individual care provider is equally accountable. For registered nurses this means incorporating the appropriate care standards into our practice. In the use of restraints this means utilizing the College of Nurses of Ontario's Guide on the Use of Restraints and we also recommend the utilization of best-practice guidelines that we do not have at this point on a least-restrictive practice.

Let me also address the issue of the fact that restraints do not require a doctor's orders, nor should they require a doctor's orders, but is actually a component of the nursing scope of practice. It is the nurse who has the greatest contact with and knowledge of the person. To decide when you need the restraints, not only do you need to know the clinical condition, you also need to know many ethical and personal characteristics of that

patient and also the wishes of that family when a patient cannot put forward his or her own wishes. It is the nurse who has the most knowledge of the comprehensive needs of that individual. Even if there are orders in place, it is the nurse who decides which type of restraints to put on and how long to put them on and who actually monitors the use of restraints in the long run. Doctors don't come every 15 minutes to change orders or to look at the restraints. Therefore we want to take full accountability for the practice and we also want to have best-practice guidelines for that practice.

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Let me tell you a bit about what we mean by best-practice guidelines and what we have done with the 17 best-practice guidelines that are either already in the final stages of evaluation in this province or in the development phase. These are guidelines which have three types of recommendations: substantive recommendations, which deal with the clinical aspects of practice; contextual recommendations, which deal with the recommendations related to the context of the environment in which the nurses practice—issues like staffing patterns, continuity of caregivers etc are part of the contextual recommendations; and also educational recommendations, which in the case of restraints will be the ethical and clinical issues entailed in the decision to put restraints on a patient or, more importantly, the alternative methods and approaches nurses can use so there is less need for the use of restraints. That's what the best-practice guideline will do, and then you use that as a baseline for a least-restraint policy which, in our view, we absolutely should have as a regulatory change.

In summary, we are recommending:

That regulation 965 of the Public Hospitals Act be amended to mandate all hospitals to establish and implement a least-restraint policy. This policy should affirm that restraint use is within the scope of nursing practice. Otherwise, it will not really be effective.

That the Ministry of Health and Long-Term Care fund the development of a least-restraint best-practice guideline. The guideline will serve as the basis for hospitals to develop their least-restraint policy, and we will be pleased to either lead, as we have done with 17 other guidelines, or participate in such an initiative.

Third, that all hospitals be required to develop and implement a least-restraint policy that is based on the least-restraint best-practice guidelines. Let me tell you, several hospitals in the province do have least-restraint policies that are being put into implementation now. But we are saying all hospitals require that, and unless we have a regulatory change, probably it will not happen.

That hospitals should be made accountable for putting in place the necessary structures and supports to enable nurses and other health care providers to exercise sound clinical and ethical judgment in implementing the least-restraint policy. This includes adequate staffing and continuity of caregivers; the latter is essential when you want to use less restraints.



Fifth, that a comprehensive approach to education in both hospitals and nursing education programs be implemented to support ethical and clinical decision-making. The topics should include patient rights, patient safety, restraint utilization, alternative approaches and least-restraint policies.

Sixth, measures should be taken to improve working conditions and develop strategies that respond to nursing human resource needs in hospitals. Restraints are not the solution for system problems or deficiencies in human resources.

In conclusion, the RNAO acknowledges Ms Lankin's outstanding support for the most vulnerable patients in our hospitals today and her personal commitment to instituting changes in our health system that support patient rights. RNAO believes that all hospitals in Ontario must develop and implement a least-restraint policy, supported by best-practice guidelines, education and research in order to deliver the highest quality of care that meets the needs of all patients. We thank you for the opportunity to dialogue with you. I will be happy to answer questions.

**The Acting Chair:** We have about 45 seconds for each caucus, beginning with the Liberal caucus.

**Mr Lalonde:** Just quickly, according to the fourth paragraph of your statement here, would you say that restraint is used because of a shortage of staff at the present time or a shortage of funding?

**Mrs Grinspun:** I would suggest that on some occasions that's the case, and I would suggest very strongly to you that that would be a problem for the nursing profession and for the nurses who are engaged sometimes in those practices. Nurses are caught in very terrible situations. For six years I was a director of a large institution in this province and I had very heavy discussions with colleagues in the practice setting. When they are caught in a situation that because of staffing issues they may need to use restraints, even if it's not very restrictive restraints, like side rails, if you are following ethically what's best for the patient and clinically what's best for the patient, not only ethically but clinically—we do know that restraints exacerbate behavioural problems. So it's not a solution; it's a band-aid approach. It should not be used for staffing issues.

**Ms Lankin:** Thank you. I appreciate very much your presentation. I think the issue of professional accountability and a doctor's order versus a nursing order is a very important one for us to grapple with, and I have to admit to you that I'm flummoxed by the differing advice that we are given. I think your recommendation that it is a whole-team, multidisciplinary approach is what we would want to see, and maybe some of the best practices and protocols will address that. I also want to indicate that I have written to the minister in support of RNAO being funded to do a best-practice study in this area. I think that would be very valuable.

In two parts of your presentation you make reference to the fact that we know the use of restraints increases in the evening and during the night. We've heard many people say that it is not an issue of staff convenience that restraints are used. We know there are also clinical

reasons why there might be increased use or perceived need at nighttime. Someone referred to the sundowner effect in terms of cognitive impairment.

**Mrs Grinspun:** Correct.

**Ms Lankin:** But this is a phenomenon that you've experienced and that RNAO accepts, that there is—I'm going to use a value-laden word—an overuse of restraints, and that this overuse occurs even more frequently during the evening and nighttime in our acute care hospitals?

**Mrs Grinspun:** Yes, there is a higher utilization—and that's well documented in the research in other countries as well—of restraint on evenings and nights and probably weekends too. But evenings and nights is specifically because of a combination between exacerbated behavioural and cognitive impairment and the impact not only with sundown but sometimes some of the medications that we give that we don't give them at appropriate times, like diuretics etc, and then the combination between that and decreased resources for sure.

That's not to say that always as a blanket statement you need to hugely increase the resources in a unit. It depends which type of unit you are dealing with. If you are dealing with an ICU, for example, you have the same type of human resources in the evening and night as in the day, because of the type of care that patients require. Most likely in a unit with patients who suffer from Alzheimer's or other conditions of dementia, you should have similar patterns during the day versus during the evening, unless you have a lot more activities done during the day. But you probably should have higher numbers in the evening and night because we know that the behavioural conditions and cognitive disturbances tend to exacerbate. We know that not only in the hospital sector. So that is the case, and that's something we need to attend to.

I do not think that staffing alone will resolve the issue of the use of restraints. That's why we are extremely supportive of the change to regulation and the need to develop a best-practice guideline that will then support the development of a least-restraint policy in the hospital sector. It is a combination of staffing, practice behaviours and knowledge, and that's why for us the issue of education is hugely important, so that people receive the proper support to make ethical and clinical judgments. There are also many changes today compared to 20 years ago, not only clinically but also ethically. Twenty years ago families would prefer that the person not fall and that the person be restrained. Today we are a lot more respectful of patients' rights, and I applaud that.

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So it's a combination of many factors. I think that's why it's so important not just to do the least-restraint policy, which is one component that will mandate that we have that, but that it be based on the best-practice guidelines that get updated every three to five years based on the most current knowledge to date. Otherwise, you will have a problem again in 15 years, even with the regulations and the staffing.



Knowledge changes, knowledge of how to approach—I don't want to say "treat" because behavioural conditions, and it's an area of expertise of mine, is an approach; it's not a treatment. Those things change and there is a lot that we need to learn and maintain our practice for all disciplines, to really decrease the use of restraints and enhance the quality of life of people.

**The Acting Chair:** The government caucus?

**Mr Gill:** Thank you for your presentation. It's interesting that in terms of health care delivery in hospitals, doctors and nurses are the major players. Both of you this morning, the OMA and the RNAO, have said—unless you consulted each other before you made the presentation.

**Mrs Grinspun:** No, but we were pleased that they named us.

**Mr Gill:** That's good. Instead of Bill 135, you're both stating that perhaps the Public Hospitals Act, regulation 965, should be amended. Both of you have said that there is no need, basically, for the act but there is a need to address the restraints through education, through least-restraint guidelines. You're not saying that we need the act but that we need to amend reg 965.

**Mrs Grinspun:** I was not at the presentation of my colleagues from the OMA, so let me refer to why they would choose this approach versus the other and I think it will help you to understand if it's similar to the OMA's. We certainly are asking for a change to the Public Hospitals Act and its regulation 965. Let me be very clear about that. Without that, you will not have permanent changes in practice. The reason we chose a regulation versus the legislative change is basically because of my explanation of the best-practice guideline, because you will be updating that regulation every three to five years as things change, from ethical knowledge, from patients' rights knowledge, from clinical approaches. That's the beauty of a best-practice guideline. Also because it incorporates more than having a doctor's order or having a nurse's order, for that matter; it incorporates the issue of the clinical knowledge through substantive recommendations, contextual knowledge through the contextual recommendations and what types of models of care delivery you need to have patients less confused and therefore needing less restraints, and the education, on-site education, to health care providers for best-practice guidelines. That's our rationale for that.

**Mr Gill:** Considering that, Mrs Grinspun—

**The Acting Chair:** Thank you, Mr Gill. Your time is up; I'm sorry. Mrs Grinspun, thank you very much for appearing before the committee this morning.

**Mrs Grinspun:** You are very welcome.

CONCERNED FRIENDS  
OF ONTARIO CITIZENS  
IN CARE FACILITIES

**The Acting Chair:** Our next presenter is the Concerned Friends of Ontario Citizens in Care Facilities. I would remind the caucus members that if they wish to

have an answer from the presenters, with the severe time allotments, it might be necessary to keep your questions brief.

Good morning. Please identify yourselves for the purposes of Hansard. You can begin at any time. You have 15 minutes in which to make your presentation. You can use all or any part of it. If there is any time left over, the members of caucus would like to ask you questions.

**Ms Lois Dent:** Thank you. My name is Lois Dent. I'm the president of Concerned Friends of Ontario Citizens in Care Facilities. With me, I have our recent past president, Freida Hanna.

Concerned Friends is a volunteer consumer organization dedicated to improving the health care in long-term-care facilities in Ontario. We have been in existence for 25 years and we have consistently advocated for policies and procedures that address the problems confronting residents in long-term-care facilities.

About seven years ago, we participated in meetings with the Ministry of Health regarding new standards and criteria for long-term-care facilities. These standards included policies governing the use of restraints. We believe the policies put in place at that time have been very effective in reducing the incidence of injudicious and abusive or even dangerous use of restraints. We're aware and we know of instances where these policies are not always followed, but with the written standards in place staff can be cited for non-compliance. In our experience, it has helped not to eliminate but to reduce the incidence of abuse. So we support the standards and criteria for the use of physical restraints in long-term-care facilities. For your information, we distributed a copy of the regulations in the long-term-care system.

It's clear to us there is a need for similar legislation to cover the use of restraints in acute care hospitals. It needs to be ensured that they are used only when necessary to protect the patient or others from serious injury. There needs to be a written doctor's order and it needs to be ensured that consent has been obtained, except in emergency situations.

We strongly support the requirement that the staff applying the restraint be properly trained, that the patient be monitored and have his or her position changed regularly, and there must be full documentation.

In summary, we endorse Bill 135 because it meets the need for a written policy on the use of restraints in hospitals. We note that the amendment speaks only to physical restraints. It doesn't address the use of chemical restraints, which is an area that may also need consideration.

I'd like to just add a personal experience that I had when I was in hospital myself. The bed beside me was empty. During the night or late part of the evening, an elderly woman was brought in. She had fallen and broken, I believe, her hip and had had the required treatment. She was very agitated and upset. She didn't seem to speak English. She was moaning and they couldn't seem to communicate with her. She was put in the bed next to me and restrained. The nurse said that was to



keep her from pulling at her bandage. She tossed and turned and moaned all night long. At about 6 o'clock the next morning or early the next morning, a nurse specialist—and I'm not sure exactly what a nurse specialist is—came in, went to her bed, took off her restraints and spoke to her calmly. It turned out she could speak English. When she was reassured, she understood. She was able to tell this nurse the name of her son so they could contact her son, and she was fine from then on. Why couldn't this have happened when she was first put into this room? If somebody had taken the time to speak to her, to reassure her, to make sure that she could communicate with someone, she probably would not have needed to have spent that terrible night under restraint.

Just by chance I happened to see this about five years ago, so it must happen a lot. We do know that having legislation doesn't completely solve the problem, but it goes a long way to making people aware of it and making changes. It's a start. Thank you.

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**The Acting Chair:** Thank you very much. We have two minutes per caucus, beginning with the NDP caucus.

**Ms Lankin:** I truly appreciate your coming forward. I recall the work you did seven years ago, when the Ministry of Health was doing its consultations on changes in the long-term-care sector, and the role you played in the recommendation for a legislative protection or a legislative regulation around this issue of the use of restraints in long-term-care facilities.

We heard, for example, from the OHA yesterday and then a chronic care facility, that numbers show there has been a decrease in the frequency of use of restraint. Other experts have told us that it is directly related to the fact that there is a legislative base on which good policies have been built and good education has been done. You've alluded to the fact that you think there has been an impact as a result of that. Could you just elaborate on that a little bit more from the perspective of your organization? Do you have fewer complaints about restraints? How are you aware that the legislation has had a positive impact?

**Ms Dent:** We get calls from family members and sometimes residents of long-term-care facilities. We used to get more complaints—I think maybe you would corroborate that—about restraints. They used to use them much more frequently than they do now. We still do sometimes—it hasn't completely solved the problem—and sometimes they are absolutely necessary. But it's interesting that the number of concerns we hear has substantially decreased.

**Mr Jerry J. Ouellette (Oshawa):** First of all I'd like to congratulate Ms Lankin for having the OHA enter into that review policy, their commitment the other day, that they had a chance to do that. I have a couple of quick questions.

We've heard a number of presenters recommend who should decide whether a patient should be restrained or not. Do you have any idea? Should it be the nurses,

should it be the physicians who determine that or do you have a position on that?

**Ms Dent:** I don't think we're qualified to say that.

**Ms Freida Hanna:** The families have to be consulted in long-term care. Families are consulted and sometimes families want the resident restrained. It's up to the staff to talk to them and give—

**Mr Ouellette:** Do you think, though, that the family should be the final ones who make the decision, or should it be the physician's decision, or should it be nurses who make that decision?

**Ms Hanna:** It has to be with the information shared with the family, if there is a family member. Some residents do not have family, therefore it has to be a nurse's or a doctor's decision.

**Ms Dent:** But consent is very important here. I think we need to have consent—

**Ms Hanna:** In the hospital, I would think.

**Ms Dent:** Yes.

**Ms Hanna:** Consent of the patient.

**Mr Ouellette:** I have another quick question, if there is any time remaining. I know Mr Spina has a question. Are you familiar with the crisis intervention training that was mentioned yesterday by one of the presenters? If so, do you believe it's successful in helping to determine whether nurses are able to go out to assist? It was a training program that was brought forward that was mentioned.

**Ms Dent:** In hospital?

**Mr Ouellette:** Yes.

**Ms Dent:** No.

**Mr Ouellette:** Do you know of any other training programs that are available?

**Ms Dent:** Specifically around restraint?

**Mr Ouellette:** Yes.

**Ms Dent:** I'm not familiar with what is available, but I notice it says in this bill that it's important that the people administering the restraints be trained in how to do this. I think this is a very important part of the bill. Nurse practitioners, of course, are another possibility here, that they have additional training. It may be that they would have the qualifications to issue an order, as well as physicians, but that isn't an area that I think we're really able to comment on.

**Mr Ouellette:** Yes. One of the presenters mentioned the crisis intervention training and other groups have not heard of it. That may be one of the problems, that there is training available out there, according to the presenter, that other groups and organizations haven't even heard about.

**The Acting Chair:** Mr Spina may have another question, but he'd have to use the Liberal time, and I don't think the Liberals want to give that to him.

**Ms Di Cocco:** It's through discussion with Frances Lankin that I certainly became aware of this whole issue of patient restraint and I have to say that it's one of those areas that I truly was not at all educated on. I had no idea. I had assumed that these things are all in place and that there's a criterion of sorts or some kind of value



judgment that's made very, very—how do I say it?—thoughtfully before any of this is used. But obviously, from some of the testimonies that I've heard, that isn't the case.

You talked about a case, a personal situation that you witnessed, I guess. Did you hear a reason as to the rationale for restraining the person who was there? I'm quite curious.

**Ms Dent:** The reason was that they were afraid. Because she was so upset and agitated she was pulling at her bandages and they wanted to prevent her from pulling off the bandages.

**Ms Di Cocco:** And you have said that—I mean it's through your advocacy, I guess, that long-term care has some sort of policy in place in this regard. Can you just elaborate for me on the difference between before your advocacy and what you see now in long-term care and the fact that there is legislative regulation?

**Ms Dent:** There are very specific standards. There are about 19 or 20 points—criteria—that need to be met in long-term-care facilities when restraints are applied. It's very clear who has the responsibility, who does it, for how long, that they must have training and that they must use the least restrictive restraint. This is because it's there in writing that if a family member or someone sees that restraint is being used inappropriately they have a place to go. They can go and complain and it has to be rectified, because it's there in writing.

**Ms Di Cocco:** So there's a process of asking why this is happening or there's a process of accountability, I guess?

**Ms Dent:** Yes, exactly. The accountability is right there.

**The Acting Chair:** Ms Dent, Ms Hanna, thank you very much for your presentation this morning.

## RUNNING TO DAYLIGHT FOUNDATION

**The Acting Chair:** Our next presenter is the Running to Daylight Foundation. Would you please identify yourselves for the purposes of Hansard. You have 15 minutes in which to make your presentation; you can use all or any part of it. If there's any time left over we'll ask the members of the caucuses to split the remaining time.

**Ms Jane Hawtin:** My name is Jane Hawtin. Some of you know me as a member of the television/radio broadcasters, but I'm here as an honorary board member for the Running to Daylight Foundation, the Ben Globerman Memorial. With me is Sharon Deutsh, who is a parent representative with the foundation. You may want to hear some of her comments because she has the hands-on knowledge of what's happening in some of the hospitals where she goes in to try and help the patients.

Let me just say how happy I am to be here to support Frances Lankin and her bill. I am representing the foundation so I'm going to stick to the script, because otherwise I'll start yakking the way I usually do and I don't think that would help anybody.

This foundation was created in memory of Ben Globerman of Ottawa. Its purpose is to provide elderly persons in Toronto and Ottawa with patient representatives. These representatives work toward ensuring that the elderly receive access to the highest-quality care, whether it's in hospital or in the community. As I said, Sharon is one of those patient representatives.

The foundation was formed by Mr Globerman's family as a result of what they believe was treatment that did not meet acceptable standards of care, treatment that they feel did not meet such standards simply because Mr Globerman was elderly, because he had a multiplicity of health issues and because, in the words of the family, "the system just felt he wasn't worth it."

I came to the foundation because of my own experience when my father went to hospital at age 86 after being very healthy, but he declined quite quickly. Ironically, the restraint issue wasn't one, but now in retrospect I realize it should have been because my father was also restrained because he had been put on an inappropriate medication in the incorrect amount which was causing him hallucinations. Luckily, with our family we had the economic resources that we could simply be there 24 hours a day, which meant that we insisted on these restraints being taken off.

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The real issue and why I came to this organization was because of my experience of four days in a row being pressured—and "pressure" is the right word—by a doctor to put a "Do not resuscitate" order on my father. I'm a pretty assertive person. I was still made to feel guilty that I was not willing to put that on, because I really felt that he was going to have a chance to rally, which he did. We have to ensure that everyone gets the right quality of care.

But our experiences, both the Globermans' and mine, are not unique. Since the launch of the foundation in October 1999, Running to Daylight has received many e-mails, telephone calls and letters from families, not only in Ontario but right across the country, telling their own horror stories. These include concerns about DNRs, patients with stroke-like symptoms being denied CT scans, patients being starved to death, antibiotics being withheld from patients experiencing pneumonia and elderly patients with congestive heart failure being abandoned on wards for days.

The humiliation and brutality that Frances Lankin's mother went through is symptomatic of a larger issue. It's symptomatic of a health care system that too often places little or no value on the elderly, and discounts their dignity, their intelligence and their right to have the same commitment to care at 80 that they would receive if they were 18.

The foundation's concern is that ours is quickly becoming a health care system that too often lacks compassion. It rushes to judgment, it writes people off, and an elderly person's prognosis is being based only on their diagnosis and has nothing to do with their emotional,



psychological or spiritual makeup. Ladies and gentlemen, this is ageism at its ugliest.

The majority of our health care professionals are skilled and caring. They are people who are dedicated to helping their patients recover, but there is a strata within the system that doesn't meet these expectations, and it is this that we have to take measures to guard against. Whether the horror stories represent 10% or 20% or 30% of what is actually happening to the elderly who are admitted to hospital, anything more than zero is unacceptable. Everyone who uses our health care system, which was once thought to be the best in the world, must have the chance to battle their illness and optimize their chances for survival and recovery. Everyone in the province of Ontario, irrespective of their age, gender, medical history or presenting problem, must be guaranteed, without reservation, access to the highest-quality health care, and that includes not being restrained according to the whim of the service provider.

We have heard in previous statements over the past few months about the relationship between the cutbacks in nursing and other health care resources and the inappropriate use of restraint. We believe that this is no doubt the case and, while not an excuse for such behaviour, it is something that needs to be looked at.

How then can we, as citizens living in one of the progressive countries in the world and with such a health care system that should be model for all, ensure that people like Frances Lankin's mother never have to go through that again? The answer lies not only in the passing of Bill 135 but in the establishment of standards for all health care practices, in the appropriate funding for organizations to meet those standards, in the establishment of rigorous monitoring mechanisms to determine if those standards have been met and in the implementation of swift and effective remedial measures if they aren't.

The Running to Daylight Foundation believes that the fact that the legislation outlined in Bill 135 has never existed for public hospitals is symptomatic of a larger issue. It is symptomatic of a system that too often lacks accountability to those who use health care services and to their families. It is symptomatic of a system that is pre-occupied with meeting financial targets rather than medical ones. In reality, people don't judge the health care system by a 10% increase in spending, or 20% or any other percentage. The increase doesn't mean anything. All the patient knows is that if he or she has to suffer the pain and humiliation of waiting 10 hours for a staff doctor in an ER, they're not going to care that they were triaged by a nurse within 15 minutes.

What the average person on the street wants is a guarantee that when they or their loved ones receive care, that the services will be available in a clinically appropriate manner and time, that the services will be responsive and delivered with compassion, concern and courtesy, and that they will not be the brunt of apathy or insensitivity, even if the provider is a victim of depleted resources or has some kind of personal bias.

To those who would argue that Bill 135 is too intrusive or burdensome, that it micromanages the health care system, that it's going to cost too much or might be better accomplished through education or self-monitoring, let me say this: we have to be taking every opportunity we have to augment the intent of the Canada Health Act through legislation and standards. This is not the time to weaken our foundation for national medicare but to strengthen it. Wherever we find the flaws, we have to ensure that the solutions are entrenched in laws and standards, and if such standards result in greater financial commitment, so be it. We would argue that it's a price that most of us would be willing to pay, especially after you go through this experience with someone who is elderly. We would not be adjusting the standards to what we are willing to finance but rather adjusting the finances needed to meet the standards.

We have some problems: the cutback of approximately 10,000 nursing positions and the crisis we face in being able to hire them back; the number of elderly people who are having to experience the gruelling schedule of nighttime dialysis—they aren't getting home until close to midnight; many patients are having to travel to the United States for cancer treatment, and suffering devastating trauma and loneliness because their families can't afford to go with them. The many horror stories that our foundation has documented are happening, not because we have too many safeguards built into the system but because we don't have enough.

There's another point. Why would we expect the health care providers to regulate themselves if that hasn't worked in the past? The guidelines for the use of restraints were put forward by the Ontario Hospital Association in the early 1990s—guidelines: up to the discretion of the hospital to implement and monitor—and the research shows the guidelines or policies are not being observed or not monitored, not everywhere.

The implementation of legislation and standards should be viewed not as micromanaging; the implementing of legislation and standards is about management and accountability for the health care system. Legislation standards must exist to manage the managers. While it's true that the responsibility for guaranteeing access to the highest-quality care is a responsibility for all of us—the funders, the planners, the service providers, the professional associations, the consumers, the media—the ultimate responsibility has to lie with the government. The buck has to stop somewhere.

What happened to Frances Lankin's mother is a travesty. We must take the issue very seriously and resolve it quickly, effectively and without reserve. It's not about politics; it's about humanity and about morality.

We urge you to lend your support to Bill 135 in the spirit in which it's been formulated. The line between being well and being ill in hospital is as thin as a razor's edge. Let us not forget that any one of us in this room could have experienced what Ms Lankin's mother did, and without adequate legislation and standards established, we could encounter it in the future. Augmented by



education and training, such legislation and standards are the way to a brighter future.

**The Acting Chair:** We have approximately one and a half minutes per caucus for questions. I would remind the members to keep your questions short.

**Ms Lankin:** Mr Chair, sorry; once again I want to indicate to members of the committee that I will be moving a motion that I think will eliminate the need for us to resume this afternoon. So perhaps we might be able to add a few minutes on at this point and allow committee members to ask a couple of questions of the presenters.

**The Acting Chair:** There would have to be unanimous consent.

We'll give you two more minutes. We begin with the government caucus.

**Mr Tascona:** I'll be brief because I want to deal with Ms Lankin's motion on this. We've heard from a broad section of the community with respect to this issue. Obviously it's important that this issue has been raised, and we appreciate that. That's part of the reason we have public hearings, to get input on everything.

What we've heard this morning is a philosophy in terms of how you provide care. It's not a cost issue; it's a philosophy issue on how you provide clinical care. That's what we're hearing from the experts, the doctors and other people who are legal practitioners. They never raised it as a cost issue. So I want to put that forth to you in terms of the health care system. It's more whether you know the legal right, whether you apply it properly in terms of what health care is going to be provided, the issue of consent and the issues that have been raised in the bill.

I'm just making a comment. I really don't need any response to that. That's what we've been hearing throughout the process and certainly Hansard is available on that. So I would urge you to read that in terms of what we've been hearing here today.

**Ms Hawtin:** Am I allowed to respond to that?

**The Acting Chair:** Of course.

**Mr Tascona:** I'm not looking for a response on that, but if you wish.

1200

**Ms Hawtin:** Sharon may want to respond to it. I'm aware of that, but I don't think a lot of the people in the field would necessarily agree with that, especially if you see what happens at nighttime. Restraints are used more often at night when there are fewer nurses available.

The reason we've formed this foundation and the reason we feel patient representatives are needed is that not everyone can afford, the way we could, to have someone there 24 hours a day when someone goes to hospital. In a lot of cases that's needed, and part of that is because of cutbacks.

**Mr Tascona:** We're not hearing that. I want to be clear with you. It's been a clinical care issue in terms of whether you respect the rights of the individual or not. I'll share that with you. I'm not going to debate it with you.

**The Acting Chair:** Members of the Liberal caucus.

**Ms Di Cocco:** I'm going to start off by agreeing to disagree with those comments. I have heard it is an attitude of how we provide care. On the other hand, it's a reality that if you don't have personnel dealing with that needed care of watching over the patient—and I agree, I hear this a lot—people who have the means can have somebody there all the time, either their family or whatever. I think it's a combination of both. It is the attitude of how we provide services, and maybe you can either expand on it or respond to it. It's both the attitude and also this sense of just fixing dollars rather than the need of personnel. Yes, there is a shortage of nurses and there is a shortage of health care workers. That's been augmented, I believe, by policy and for other reasons. Again, we're not here to debate it, but I believe that's the reality.

You've obviously formed a group for a specific reason. Can you tell this committee if you've seen changes? This bill I hope is a change for the better in how we provide services, but can you tell me if you have seen changes in the last four or five years that have impinged maybe on the quality of health care with the elderly in this province?

**Ms Hawtin:** Sharon is better able to answer that.

**Ms Sharon Deutsh:** I think there have been changes over the last four or five years, and maybe even longer, actually, but there definitely is less staffing available out there. However, elderly people are being shortchanged. I think that has increased over the years where, if you have a 30-year-old person coming in versus an 80-year-old, that 30-year-old will more than likely get better care versus an elderly person.

A lot of the cases I have dealt with are elderly patients who have gone into the hospital in an acute care setting, sometimes in long-term care, and they have either been overmedicated or underassessed. There's been very little communication that's taken place between the physician and the family and the patient, if the patient is able to communicate—sometimes they're not at that level—and these patients are being pushed to the side, so to speak.

**Ms Hawtin:** You had a letter from a family member who said they felt that their father would have starved to death if you had not been there.

**Ms Deutsh:** Yes.

**Ms Hawtin:** Because he wasn't being properly fed.

**Ms Deutsh:** In this particular case, the gentleman was being overmedicated to the point that I guess you could compare that to being physically restrained. The trays would be brought in in the morning, put on the table and then they'd come back in, he wouldn't have touched them and the trays were taken away at that time. Then, later on, when the sister was able to come in, did not have the finances or the resources to have somebody at this patient's bedside, she would attempt to feed him, and he was either too sedated to swallow his food or, if he was a little bit less sedated, he would gobble it up like he hadn't seen any food all day. This is a very common situation that is arising in the hospitals.



**Ms Lankin:** I want to say to you, Mr Tascona, that throughout this I have attempted to present the information that I've uncovered in looking at this as a systemic problem that has existed for many years in the province. I think that it is fair comment to say that whenever there are stresses and strains in the system, something of this nature might be exacerbated and we have heard that. I have to disagree with you in terms your assessment of all we've heard. I think the RNAO presented in their view that in part there is a relationship to staffing levels. That for me is not where we as a committee need to start because this issue, I think highlighted by the foundation that's presenting here, is one of cultural treatment of our seniors, and it's something that is not related to government or government ideologies and political parties in any way. I think times must change and it's something we have to grapple with.

I had the opportunity to meet with the founder of Running to Daylight and am very supportive of the goal of establishing a system of patient representatives. You may know that I had an opportunity to participate in a government that looked at establishing an advocacy commission because there was a belief that there was a need for some people in our society to have access to advocates. Could you tell us what, as a patient representative, your finding is and what the goal is with respect to a program of patient representatives in the province?

**Ms Deutsh:** The main goal of the patient representative is to increase the elderly person's access to high-quality health care through representations of the patient. Part of that goal is also to help empower the family and the patient, so if we can empower through guidance and communication and help to communicate with other staff in the hospitals, then that is one level of our role as a patient rep.

The other role is to come into the institution or to meet with the families and assess what their needs are and then to take that into the setting and discuss with the medical personnel the care and try and devise a goal for this patient's care in a non-adversarial way. What it does is allow the family to be able to communicate their concerns, hear the medical concerns and hopefully create a plan that is going to enhance the care of that elderly person.

Does that answer your question?

**Ms Lankin:** Yes, thank you. I just want to say thank you very much for your foundation's support of this legislative initiative. We're hopeful to work through and find the right kind of language that will meet some of the legitimate concerns that have been raised. I remain committed to having at the base of this initiative a piece of legislation that guarantees rights. I appreciate your support.

**The Acting Chair:** Ms Hawtin and Ms Deutsh, thank you very much for your presentation this morning.

Ms Lankin, you were wishing to make a motion?

**Ms Lankin:** Yes, I'd like to place a motion on the table and then, if I may, speak to the rationale for it: that clause-by-clause consideration of Bill 135 commence

when the standing committee on Legislative Assembly resumes regular committee meetings during the spring sitting of the Legislature.

**The Acting Chair:** Could we have a copy of that motion?

**Ms Lankin:** Yes. Mr Chair, if I could speak to that motion? I would appreciate any comments, thoughts or discussion that may ensue.

As I indicated yesterday in opening comments, there has been tremendous goodwill shown by members of all political parties toward this legislative initiative and I think we want to sort out what's the best way to go forward. The former Minister of Health had expressed interest and had assigned a parliamentary assistant to work with me and there was discussion of having someone within the policy or legal branch of the Ministry of Health that I might have access to to talk about the specifics of the bill, some of the provisions that you've heard people talk to: doctor's order or nurse's order, two hours monitoring or 12 hours monitoring, a range of those sorts of things; how much detail is in legislation and how much is in regulation—some of the comments you heard from the OMA and the RNAO.

1210

As I indicated, as a private member working with legislative counsel to draft this, MPPs' offices do not have the same access to legislative counsel or to the policy machinery that exists within the ministry. So that's an important next step to get to.

I have not had the opportunity, since the cabinet shuffle last week, to pursue this issue with the new Minister of Health. I'm hoping that support will be there and will continue. It is clear to me that there needs to be some time to do more detailed work, hopefully with the ministry's participation, in terms of any amendments that are brought forward. I think the committee, all of us, would feel unprepared this afternoon to deal with specific amendments. I think we require more support and assistance on policy.

I fully recognize that there is a possibility that all this might be for naught. Rumours abound, and the rumour is that there may be a prorogation of the House. That being the case, it would be necessary for me to introduce a new bill in any event. This work would not be in vain and the work I might be able to do between now and then with representatives of the ministry to develop amendments would also not be in vain, as opposed to an amendment process that would be a new bill that would be introduced, hopefully containing those amendments.

I think it would benefit the process and the quality of the bill, the legislation we're going to consider, to have a period now of a month and a half or so, or whenever the House is called back, to do more substantive work on the provisions of the bill. Hopefully this committee or, with a new bill, whatever committee it's referred to, would deal with that during the spring sitting of the Legislature.

That's the rationale. I would be interested if Mr Tascona feels that's a reasonable process or if he has any comments or advice on that.

**The Acting Chair:** Further discussion?

**Mr Tascona:** I appreciate all the work you've put into this. I think we've got some very good input on the process. Certainly if we go to clause-by-clause in the spring, I would anticipate some notice on the amendments that may or may not be brought forth so that the members just don't show up for a meeting without the amendments. That's my only comment on that. I would anticipate the clerk would make arrangements on that, because I think the motion we approved the other day says, "Amendments to the bill will be distributed as available." So I'm anticipating availability, hopefully before the commencement of clause-by-clause.

**Ms Lankin:** I will certainly give you that undertaking, Mr Tascona.

**Mr Tascona:** In that vein, I have no difficulty with supporting the motion.

**The Acting Chair:** Further discussion?

**Mr Ouellette:** Just a quick question regarding the OHA review. Are you anticipating any outcomes or are there going to be implications to the amendments, and when is the expected completion date of the review?

**Ms Lankin:** I don't expect that the OHA review will be done in a time period that would inform the amendments to the bill, other than to say that it is possible some of the specific detail we're speaking of may end up reverting to a regulation form, so that the general prohibitions and the general conditions are set out but the details of monitoring could be put in regulations. That could then be informed not just by the OHA review but by the RNAO best practices and a number of things.

I'm sorry, I can't remember the expected completion date, but I know it is not in a time frame that would coincide with the spring legislative session.

**The Acting Chair:** Further discussion? There being none, I will reread this and then I'll call the question.

It has been moved by Ms Lankin that clause-by-clause consideration of Bill 135 commence when the standing committee on the Legislative Assembly resumes regular committee meetings during the spring sitting of the Legislative Assembly. All in favour? Passed unanimously.

We will adjourn until the call of the Chair.

*The committee adjourned at 1215.*





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**Legislative Assembly  
of Ontario**  
Second Session, 37<sup>th</sup> Parliament

**Assemblée législative  
de l'Ontario**  
Deuxième session, 37<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

**Thursday 17 May 2001**

**Journal  
des débats  
(Hansard)**

**Jeudi 17 mai 2001**

**Standing committee on  
the Legislative Assembly**

**Organization**

**Comité permanent de  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Thursday 17 May 2001

Jeudi 17 mai 2001

*The committee met at 1551 in committee room 1.*

## ELECTION OF CHAIR

**Clerk Pro Tem: (Mr Doug Arnott):** Honourable members, I have received a letter from Gary Stewart, MPP, submitting his resignation as Chair of the Legislative Assembly committee. Therefore, it is my duty to call upon members to elect a Chair from among your number. Could I have a nomination, please?

**Mr Jerry J. Ouellette (Oshawa):** I would nominate Margaret Marland.

**Mrs Margaret Marland (Mississauga South):** Oh, do you know what? Do you mind? I asked Caroline to nominate me.

**Mr Ouellette:** Oh, sorry. I withdraw the nomination.

**Mrs Marland:** Sorry, Jerry.

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** He's not going to vote for you now.

**Mrs Marland:** Can we start it again? I'm sorry, Mr Clerk, could you start the meeting again? I don't want it to show that comment. In fairness, it meant a lot to me to have an opposition member.

**Ms Marilyn Churley (Toronto-Danforth):** So that's all off the record?

**Clerk Pro Tem:** Honourable members, it is my duty to call upon you to elect a Chair of the committee. Are there any nominations, please?

**Ms Caroline Di Cocco (Sarnia-Lambton):** I nominate Margaret Marland to be Chair.

**Mr Ted Arnott (Waterloo-Wellington):** Mr Clerk, I'd like to second that nomination.

**Ms Churley:** Wait a minute. I wanted to second the nomination.

**Mr R. Gary Stewart (Peterborough):** Do we have to start all over again?

**Clerk Pro Tem:** Are there any further nominations? There being no further nominations, I declare Ms

Marland elected Chair of the Legislative Assembly committee.

**The Chair (Mrs Margaret Marland):** First of all, I'd like to thank Caroline Di Cocco for the nomination and all members for their support. It's nice to be back with the Legislative Assembly committee, as a matter of fact. It was always one of my favourites. I think the main reason was that it was always the least partisan, and we did a lot of really productive things together as a committee. So I look forward to our doing that in this term.

## ELECTION OF VICE-CHAIR

**The Chair:** The next order of business is to have nominations for a Vice-Chair, Mr Clerk. Are there nominations for a Vice-Chair?

**Mr Tascona:** I nominate Gary Stewart as Vice-Chair.

**The Chair:** Gary Stewart has been nominated. Are there any other nominations? All right, then, all in favour? It's unanimous. Thank you very much, and congratulations, Mr Stewart.

**Ms Churley:** Did we have any choice in this? Let's be honest. Not that I'm objecting, but—

**Mr Stewart:** There's always a choice.

**Ms Di Cocco:** I guess the choice you had was not to sit on the committee.

**Ms Churley:** That's true.

**The Chair:** That's true, but don't make that choice.

What else would you like us to do today? Is there any other business that we would like brought before the committee this afternoon?

**Mr Tascona:** I move adjournment.

**The Chair:** Moved by Mr Tascona. All in favour of adjournment? Thank you.

*The committee adjourned at 1555.*

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## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 14 June 2001

# Journal des débats (Hansard)

Jeudi 14 juin 2001

## Standing committee on the Legislative Assembly

Committee business

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STANDING COMMITTEE ON  
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L'ASSEMBLÉE LÉGISLATIVE

Thursday 14 June 2001

Jeudi 14 juin 2001

*The committee met at 1541 in committee room 1.*

## COMMITTEE BUSINESS

**The Chair (Mrs Margaret Marland):** I'm going to call this meeting to order. We have been delayed to this point because the House was still dealing with routine proceedings, and we now can start.

As you know, there have been two meetings of the subcommittee and we have tried as best we can to get the mandate of this committee confirmed by a motion in the House. Unfortunately, we don't have a copy of that draft motion at the moment, but our House leader was happy with the draft motion, and Mr Kormos, who is subbing in today, and of course is the NDP House leader, has informed me that he did not have any difficulty with the draft motion.

It was very straightforward; it simply was putting in a motion form the matter that was referred to in the throne speech about the fact that we would be looking at ways to enhance the role of private members and the consideration of the use of technology in the House. The status of that motion is that it has still not been dealt with in the House, although the NDP and the government House leader have approved it.

Mr Jean-Marc Lalonde has just brought to my attention an amendment to that motion which the Liberals are going to propose, so this is not an easy process because only the subcommittee, Mr Clerk, dealt with the draft motion. It is only a draft motion until it goes through the House.

I guess I'm seeking your advice, Mr Clerk. I would think it's inappropriate for us to deal with an amendment to that motion, since the motion is not before us and it will be up to the House leaders to either resolve it or the motion will be moved by the government House leader, and at that point the Liberal House leader could amend it.

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** Excuse me, Madam Chair, but where are we on the agenda?

**The Chair:** We're dealing with the matter of our entire mandate.

**Mr Tascona:** Oh.

**The Chair:** And that's why we have to deal with it first.

**Mr Tascona:** This is prior to the agenda. OK.

**The Chair:** We haven't started the agenda yet. We're dealing with the fact that this committee, at the moment, doesn't have the terms of reference for those matters that were referred to us.

So I would suggest—and, Mr Clerk, if you can confirm this with me—that this amendment which Mr Lalonde has brought with him today would need to be tabled in the House by his House leader at the time the motion is before the House, because it's a motion for the assembly; it's not a motion for this committee. It was just drafted for the purposes of the subcommittee as a guideline.

**Clerk of the Committee (Mr Douglas Arnott):** That is quite correct, Madam Chair. The government motion has not yet been provided as notice on the order paper.

**Mr Jean-Marc Lalonde (Glengarry-Prescott-Russell):** My House leader came up with this amendment. Since it was a draft, he was trying to get that included in the draft. That's why he submitted this one. But he also told me that this was sent to the government House leader.

**The Chair:** He has sent it to the government House leader?

**Mr Lalonde:** Yes.

**The Chair:** I'm going to rule that the original draft was referred to the House leaders. I think that's where this amendment has to go.

**Mr Lalonde:** Should I give a copy to the members?

**Mr Tascona:** I haven't seen any amendment.

**Ms Marilyn Mushinski (Scarborough Centre):** I don't think we should approve anything that hasn't been approved by the House leaders. This is an all-party committee.

**Mr Tascona:** Was this discussed in subcommittee?

**The Chair:** Yes.

**Ms Mushinski:** Who was on subcommittee?

**The Chair:** Excuse me. The original draft motion was discussed in the subcommittee.

**Mr Lalonde:** That's right. You've asked us if we had any comments, if we had approved the draft as presented. This is why I've gone to my House leader and he came back with this proposed amendment. We followed your recommendation.

**The Chair:** When I suggested to the subcommittee that they discuss the draft motion with their House leaders, Jean-Marc, I didn't ask that they bring it back to the committee. We were leaving it with the House leaders

because it was the House leaders that had to take it through the House.

**Mr Peter Kormos (Niagara Centre):** If I may, Chair, and I'm trying to help at this point, the motion that ends up being presented to the House for approval may well include this addition. The point is that whatever that motion is, it is the motion that the government House leader is going to present to the House. The motion she's going to present to the House is the one that the House leaders agreed upon. I leave it at that.

**The Chair:** What you're saying is the same thing as me—that this matter is not before this committee.

**Mr Kormos:** That this is irrelevant, with all due respect. Whatever the motion is, is the motion.

**Mr Tascona:** I haven't got the entire motion.

**The Chair:** You've just been handed it.

**Mr Tascona:** I was passed an amendment.

**The Chair:** You were on the subcommittee when we did this.

**Mr Tascona:** I don't have a copy of it here. I don't think other members do either.

**Ms Mushinski:** Your amendment is the proposed change?

**Mr Lalonde:** The proposed change is in the second section and other sections I struck out there.

**Mr Kormos:** With respect, Chair, that's not for this committee to concern itself with.

**Ms Mushinski:** I agree.

**The Chair:** Let's move on, then. We put as the first item here the meeting time schedule for this standing committee of the Legislative Assembly. We did discuss this again in the subcommittee and we asked that it be discussed in terms of a preference for meeting time. What we were wondering was whether we could change the meeting time for the Legislative Assembly committee from Thursday afternoon to another time. We've had a few subs in and out here, so it has not been easy to deal with, but we were proposing that a Tuesday afternoon or a Wednesday morning was possibly a better time, a more equitable time than 3:30 on a Thursday when members who have a long way to return to their ridings might normally, after routine proceedings, be able to leave on a Thursday afternoon.

So I'm looking for input on the meeting schedule, recognizing that we will have to look at how it works with other meeting times and House duties. That's up to each individual caucus.

1550

**Mr Lalonde:** We had quite a lengthy discussion on that. I would be willing to accept a Tuesday afternoon. But I want to make sure that everybody agrees to that—Tuesday afternoon instead of Thursday afternoon. As the Chair just mentioned, at times a lot of us have to go back to our ridings on Thursday afternoon.

**Ms Mushinski:** We've already got committees that meet on Tuesday afternoon.

**Mr Tascona:** I think the problem is I have House duty on Tuesday afternoon. There might be other members

who have other committee meetings. Do any other members have committee meetings on Tuesday afternoon?

**Mr Ted Arnott (Waterloo-Wellington):** I don't.

**Ms Mushinski:** I'm subbing today, so it is hard for me to speak.

**Mr Lalonde:** How about Wednesday afternoon?

**Mr Kormos:** I do not purport to address this with any awareness of what other obligations Ms Churley has. I'm not prepared to agree on her behalf without—

**The Chair:** Oh, in the subcommittee, she also agreed on Tuesday afternoon or Wednesday morning.

**Mr Arnott:** I think I proposed Wednesday morning as an alternative. That's just to suit my schedule. I'm not trying to impose it on anybody else if everybody else—

**The Chair:** Are there committees meeting Wednesday morning?

**Ms Mushinski:** Wednesday morning is the best morning, because that's the morning cabinet meets.

**Mr Jerry J. Ouellette (Oshawa):** What status are we at with regard to the cloning legislation?

**The Chair:** Just a second. There are other committees meeting Wednesday mornings?

**Clerk of the Committee:** Yes.

**Mr Ouellette:** I'm just saying what status are we at with the cloning legislation, because the two other proposed times I already have committee duty as well as House duty. The expectations are to be there. We are getting spread pretty thin as it is now. I'm voting in favour of Tuesday afternoon.

**Mr Kormos:** You're spread? Please.

**Mr Tascona:** I indicated my difficulties, as I have House duty that day.

**The Chair:** I do too, Tuesday afternoon.

**Mr Tascona:** I thought we were thinking about Thursday mornings, because we have private members. They could be in here, and they could still do the private members.

**The Chair:** What's the resolution to this, then?

**Mr Tascona:** Peter's subbed on, but I guess Marilyn says it is fine. Who are you subbed on for?

**Ms Mushinski:** Gary Stewart.

**Mr Tascona:** I don't know whether you can do that in terms of—if you want to do it Thursday morning, I'd be quite agreeable to do it Thursday morning.

**Mr Lalonde:** On Thursday morning, we have about one hour and 45 or 50 minutes because most of the time there will be a vote at five to 12.

**Mr Tascona:** You've got two hours.

**Ms Mushinski:** What did the subcommittee recommend? Did you talk about it?

**Mr Arnott:** Could I make a suggestion? There are a number of alternatives, obviously. Maybe it would be simplest just to leave it the way it is, Thursday afternoons.

**The Chair:** All right. Then, the answer to the first item is that we will keep the meeting schedule as it is.

You all have received a copy today of a document referred to as a final report. It is a case report. It has been submitted by the Ombudsman, Mr Clare Lewis. As you



will note, his covering letter is today's date, June 14. The date on the report is May 31. Since we received the report in the House—do all members have this letter?

**Mr Tascona:** Yes, I do.

**Mr Lalonde:** Which one are we referring to? We have two reports.

**The Chair:** You have one report, which is the thick one attached to this.

Subsequent to that, the Ombudsman has e-mailed this afternoon notice to this committee that he has tabled his final report. He says he's looking forward to presenting the findings of his investigation to members of the standing committee. He says also in the letter, "It is my understanding that your next regularly scheduled meeting is June 21 and as such I look forward to meeting with you at that time or as soon as possible thereafter."

I need to know the wishes of the committee pertaining to when we invite Mr Lewis to come before the committee to discuss his report, which contains a recommendation. I should advise you that you've also received from the clerk an overview of procedures re Ombudsman's case reports. There is a process there where witnesses are invited to be heard in the following order: the Ombudsman and the governmental organization involved.

**Mr Kormos:** You indicate that Mr Lewis is available June 24. Am I correct in that regard?

**Mr Tascona:** June 21.

**Mr Kormos:** I am urging the committee to consider that. Don't forget the House is expected to rise June 27 or 28, which means that will be the one and only meeting, subject to summer sittings, before the fall. Everybody here knows this has been a contentious matter, so I think the committee should begin its work as soon as it can.

**Mr Tascona:** I would agree that next week will be fine, depending what else we have to do.

**The Chair:** I would like to suggest that we consider the possibility here that if you're going to hear from the Ombudsman—Mr Clerk, you can tell me—it says here, "Witnesses are invited to be heard in the following order," so it would suggest to me that they are both attending the same meeting.

**Clerk of the Committee:** Yes, that is correct.

**The Chair:** I would say that the committee might want to look at the fact that the governmental organization involved has just received this report today. Is it feasible for them to respond to a report that's been a year in the writing within the next two weeks, and is that in the best interests of the outcome of the report in any aspect if the responder is only given a week or two weeks to respond? That's up to you consider.

**Mr Tascona:** If I can ask a question. It says in this overview of procedures which we've been given, "Committee sets a date for consideration of the case report." What you're saying, then, is that it's all part of meeting in an open session to consider the report or meeting in a closed session to consider the report. That's all together.

**The Chair:** Mr Clerk, are they sequential or are they one or the other?

**Clerk of the Committee:** They are sequential. The first report being considered in open session with witnesses is the Ombudsman's report. The consideration usually in closed session has been of the committee's decision on what to recommend with respect to the evidence it's heard.

**Ms Mushinski:** And that can happen the same day?

**Clerk of the Committee:** Yes, sometimes it has.

**Mr Arnott:** Madam Chair, would it make sense to schedule the Ombudsman one week and then the governmental organization involved the following week, or would it be better to have them both the same week?

**The Chair:** I think the courteous thing would be to invite both of them the same day in order that they can hear each other.

**Mr Tascona:** I think the point you're making, Madam Chair—and I don't have any difficulty with that—is to perhaps contact the Ministry of Health in terms of their availability to deal with this report with us.

1600

**The Chair:** And you're having difficulty with that?

**Mr Tascona:** No, I don't. I think it's prudent to do that. We shouldn't be setting a date without having contact with them first. I agree with you.

**The Chair:** All right. So—

**Ms Mushinski:** May I ask a question perhaps of the clerk. In the past, under section 21(4), after recommendations have been sent to the Premier and then a report filed with the assembly through the Speaker, has it been the normal practice to refer it to a standing committee?

**Clerk of the Committee:** Under the standing orders that govern this committee, the reports of the Ombudsman are referred to this committee. Prior to this committee having the mandate to review Ombudsman's reports, they were referred to the standing committee on the Ombudsman and, prior to that, to a select committee on the Ombudsman.

**Ms Mushinski:** OK, and in so doing has it been the normal practice for the committee to schedule as quickly as possible a meeting with both the Ombudsman and the ministry affected?

**Clerk of the Committee:** My understanding is that the committee has attempted to schedule consideration as soon as it can. Of the last four case reports considered by the committee, two were considered within about a week—certainly under two weeks—of the tabling of the report, and two of them, tabled just before a recess, were not considered until a couple of months later.

**Ms Mushinski:** OK.

**Mr Tascona:** I would suggest, Madam Chair, that we advise the Ministry of Health and Long-Term Care that we've received this report from the Ombudsman and would like to set a date for consideration if they could provide us with dates.

**The Chair:** All right.

**Mr Kormos:** I understand the need to accommodate the folks involved, but the Ministry of Health is well aware of the issue before the Ombudsman and far more intimate with the procedure than any of us probably ever



will be. There are two stages to the initial open inquiry—that's the open stage. One is to speak to the Ombudsman and the other is to get responses from the organization involved, to wit, Ministry of Health. Surely the committee can entertain the Ombudsman, who appears prepared to be here on June 21. Quite frankly, it would be valuable for the Ministry of Health. They'd sit in then and hear what the Ombudsman—and if the Ministry of Health says, as they have every right to say, "We need more time to prepare a response," God bless. I don't see how that's problematic. This is even fairer, then, to the Ministry of Health, because they'd know what the Ombudsman is going to say in response to any of you people.

I'm encouraging the committee once again to start the process on June 21, when the Ombudsman says he can be here. Advise the Ministry of Health. If they can start participating, fine. If not, I submit the committee then has to consider a request for a postponement or adjournment of the matter by the Ministry of Health.

**Mr Tascona:** I don't see any difficulty with that, in terms of advising the ministry that we're going to invite the Ombudsman for next week. If they're available to participate or attend, they're welcome to do that.

**Mr Lalonde:** Or if they want to make comments before we meet. But I agree that we should invite the Ombudsman for next Thursday and advise the ministry about it, and if they have any comments they will have to send them to us prior to that meeting.

**Mr Tascona:** Well, the way it reads to me, there's a formal process here in terms of—but what I'm hearing here from the clerk is that we meet in open session to consider the report. The invited witnesses are heard in the following order: first, the Ombudsman, whom we are looking to invite, and, second, the government organization involved. It doesn't anticipate comments before they come in. I would propose that we follow the procedure and meet with the Ombudsman next week and also advise the Ministry of Health and Long-Term Care that that is our intention and ask them to attend. If they wish to participate at that time, they can, or at a later date.

**The Chair:** Is somebody going to move a motion? Or, you've moved receipt and to invite them both?

**Mr Tascona:** Yes.

**The Chair:** OK, with the proviso that if the governmental organization chooses only to observe and not participate, you're going to give them another date at another time?

**Mr Tascona:** Well, whether they're able to participate at that time—the Ombudsman may not be finished. He may take up the whole session. If he doesn't, they may indicate to us prior to that, if they wish, whether they can attend in full participation or whether they wish to hear him and then participate at a later date.

**Mr Kormos:** I don't want to make something so simple more complicated. As I understand it, Mr Tascona is proposing that basically the consideration of the case report begin June 21, as simple as that, recognizing that

the Ministry of Health may request a postponement of their presentation as witnesses, at which time the committee will entertain that request.

**Mr Tascona:** Certainly we're going to entertain it at that time.

**The Chair:** Is there any more discussion on that motion?

**Mr Tascona:** That's basically it, but we're going to have to notify them that that's what we're going to do: we're going to consider the report; the Ombudsman is invited; they're invited; if they're in a position to fully participate on that date, they can; if not, then they will advise us of another arrangement or date.

**The Chair:** All in favour of that motion? Carried unanimously.

The next item: apparently there are twice-a-year reviews with the Clerk and the Sergeant at Arms, pursuant, as you see, to a requirement of the Board of Internal Economy. The question is, when would the committee like to do that? It is possible to do it in the last week of June. It is also possible to schedule it for the fall.

Actually, we should really be looking at 3 and 4 together. One thing I want to say about 4, the annual review of the television broadcast system, is that we may want to leave that until we have completed our review of enhancements, if any, to the use of technology in the House, because it may involve the broadcast system—it may not. It makes sense to perhaps leave that annual review of the television broadcast system until the late fall, hopefully when we've done some work.

**Mr Kormos:** It seems to me that if you're commencing the review or consideration of the Ombudsman case report on the 21st, you may find that flows naturally into the next meeting, which would be the meeting time contemplated for this. It seems to me you should reserve that time in case it does, because if you get your motion from the chamber, presumably part of your summer is going to be occupied with that. Items 3 and 4, subject to what other people might say, don't have any urgency attached to them, whereas the other two have time frames. I'm just suggesting that both 3 and 4 be deferred until the fall.

**Mr Tascona:** I would agree with that.

**Mr Kormos:** This is record-breaking.

1610

**The Chair:** Any further discussion? Mr Kormos has moved that 3 and 4 on our agenda be deferred for scheduling in the fall. All in favour? Agreed unanimously.

Item 5: we really dealt with that, I think, at the outset. Hopefully we'll have that motion through the House and confirmed for us next week.

Item 6 is attendance at the National—something—of State Legislatures. What does the "C" stand for?

**Clerk of the Committee:** Conference.

**The Chair:** I missed the magic word: the National Conference of State Legislatures' annual meeting in August.

**Ms Mushinski:** Is it going to be in Alaska?



**The Chair:** No. My understanding is it's going to be somewhere that's hotter than where we are today.

**Mr Lalonde:** San Antonio, Texas.

**The Chair:** San Antonio, Texas. We'll hand you out the budget report so you can decide whether all members of the committee should go or subcommittee members. I shouldn't have said "subcommittee"; I should have said all members of the committee or four members of the committee, which could be anybody.

**Mr Tascona:** Is this in Canadian or American dollars?

**The Chair:** I don't know. The clerk will advise us of that when he gets back to his seat.

We should also advise you that last year the entire committee attended this particular conference, and the people I've heard from found it quite valuable. Jean-Marc, you were there, so you might like to comment.

**Mr Lalonde:** Yes, and we got a benefit out of it. After attending some of the workshops, we introduced this system in our own riding, which has created jobs.

**The Chair:** Oh, good.

**Mr Kormos:** This is San Antonio, Texas, in August?

**The Chair:** Yes.

*Interjection.*

**The Chair:** That's what I said. It's hotter than here today.

Did you attend last year, Mr Tascona?

**Mr Tascona:** No, I didn't go. I can't go to this one either.

**Mr Ouellette:** What has the precedent been for this committee? You mentioned last year, but in previous years?

**Mr Tascona:** There wasn't. It's my understanding that it was the first one they've gone on in a number of years.

**Clerk of the Committee:** That's quite correct. The previous attendance officially had been subcommittee attendance in Cincinnati, I believe, in 1994. Prior to that it was the subcommittee in Orlando, Florida, in 1993, I believe. Over the course of many years, the predecessor standing committee on procedural affairs, and then this committee, had a long association, with full attendance by committee most of the time, occasionally subcommittee only and in some years no attendance.

**The Chair:** So as I see it, we probably have at least three options here: the full committee, a number of members, or not to attend at all. One other aspect we are anticipating is that because of the nature of the mandate that has been given to the committee in terms of the use of technology and procedural advancements, or whatever term you want to use, to enable private members to fulfill their responsibilities, we will need to do some travelling to other Legislatures and places of government assembly. I bring that to your attention because of the financial outlay for this, some of which may possibly be better used—that's up to you to decide—to cover the consequences of doing research in other meeting places, looking at that other mandate.

**Mr Arnott:** In light of that, Madam Chair, I'd like to move that only the subcommittee be authorized to attend this conference.

**Mr Lalonde:** I'll support that.

**The Chair:** That would be four members. Are you going to define it as the subcommittee or four members?

**Ms Mushinski:** Up to four members?

**Mr Arnott:** I think four members, one being the Chair and one representing each recognized party in the House.

**Mr Lalonde:** Should we not have the subcommittee instead of four members?

**Mr Arnott:** I'm just concerned about the cost. I really don't care. Do you feel strongly that it should be the subcommittee, Jean-Marc?

**Mr Lalonde:** It's because we are the ones who have to meet once in a while outside when it is not the committee.

**Mr Arnott:** Well, the subcommittee, and if a designated party's subcommittee member is unable to attend, perhaps another person could be designated to sub in as a subcommittee member. Would that be OK?

**Mr Kormos:** I support that.

**The Chair:** OK. What is the motion now?

**Mr Arnott:** That four members be authorized to attend the conference, one representing each party, as well as the Chair.

**The Chair:** I would prefer not to name the Chair as having to go.

**Mr Kormos:** May I be helpful perhaps? One member from each caucus, plus the Chair or its designate. I said "its" to be gender-neutral.

**Ms Mushinski:** I'll have you know that Margaret is not an "it."

**Mr Kormos:** I'm just trying to mind my Ps and Qs.

**The Chair:** It says here one staff, and that would be, I imagine, up to the clerk's department to decide. Right, Doug?

Is there any more discussion on this? Is there any more discussion on Mr Kormos's motion, I guess, because it is a little clearer?

**Mr Kormos:** OK, but I thought Mr Arnott had adopted that as a friendly amendment.

**The Chair:** Could you read that motion, please?

**Clerk of the Committee:** Mr Arnott moved that the committee request authorization of attendance at the National Conference of State Legislatures' annual meeting of four members of the committee, including one representative of each caucus and the Chair or designate.

**The Chair:** All in favour of that? Opposed, if any? Was that three to two? Was it carried?

**Ms Mushinski:** It was four to two, actually, Madam Chair.

**The Chair:** Thank you.

**Mr Lalonde:** What was the result of the vote?

**The Chair:** It was passed by four to two.

Is there any other business to bring before the committee? OK. All in favour of adjournment? Thank you. We are adjourned.

*The committee adjourned at 1619.*

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## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLY

Thursday 21 June 2001

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Jeudi 21 juin 2001

*The committee met at 1603 in committee room 1.*

## OMBUDSMAN'S REPORT

**The Chair (Mrs Margaret Marland):** Good afternoon. I apologize to deputations and anyone else who has been waiting, but we are not allowed to commence committee hearings until the House is through routine proceedings. We accomplished that about two or three minutes ago. Once petitions are complete, we may proceed, but the other standing order is that we have to proceed by 4 o'clock regardless. That's the reason for our delay.

As members of the committee know, this afternoon we are dealing with the report of the Office of the Ombudsman. I welcome Mr Clare Lewis and Ms Fiona Crean, who is the executive director.

It's my understanding that we have to finish at 6 o'clock, so I suggest we move forward to try to allow both the Ombudsman and the Ministry of Health approximately an hour each, since that's all we have. We will have Mr Lewis's presentation and then we'll have questions and answers for whatever is left of that hour, and then move to the second hour for the Ministry of Health. Is that agreeable to the committee members?

**Ms Shelley Martel (Nickel Belt):** I apologize, Madam Chair, it's the first time I've sat on this committee. I'm subbing today so I don't know what the usual procedure is. Will we sit again on this issue if we haven't had enough time to talk to the Ombudsman?

**The Chair:** Ms Martel, apparently that is for the committee to decide. Don't apologize for not knowing what the procedure has been, because we used to have the Ombudsman committee that dealt with the Ombudsman's reports. Now that that no longer exists the reports are coming here, so in fact there isn't a lot of precedent for how that has happened.

If you were to want to come back after today, that would have to be a decision of the committee. However, I do think, in fairness, we should be dealing with splitting the time equally today between the two presentations.

**Ms Martel:** I'll proceed in that manner, Madam Chair. I would like to get on the record that it's under the understanding that if we don't get through it, given how long his might be and the questions, we might be able to look at this again for next Thursday, as I assume we will still be sitting next Thursday afternoon.

**The Chair:** I'm asking if the committee agrees with splitting the time today. Is there concurrence on that?

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** We agree with that.

**Mr David Ramsay (Timiskaming-Cochrane):** Madam Chair, is it our information that both the Ombudsman's office and the ministry require an hour each? Is that their request?

**The Chair:** No, I don't think there was. We invited them to come before the committee. I don't think the time factor was specifically discussed, knowing that we probably would have had two and a half hours if we had started at 3:30.

**Mr Ramsay:** Do we have a sense of how long the Ombudsman's presentation is in that hour? Will there be time for Q&A in that?

**Mr Clare Lewis:** I had hoped to finish in rather quick time and allow any time you wished for questions, because I think it's important that this matter be completed, if at all possible. I understand the constraints on time. It's hard for me to keep myself limited but I'm going to do my very best.

**The Chair:** Great. Then let's proceed. Mr Lewis, you have the floor.

**Mr Lewis:** Thank you very much, Mrs Marland, and members of the committee. I want to mention to the committee that today I filed my annual report with the Legislative Assembly and held a press conference this morning. Last year I initiated what I intended to be a continuing practice of coming before this committee on that day—in fact, filing the report on a committee day—so I could discuss the report with the committee if it wished.

That's not going to be possible today given the other agenda item, but I want you to know that each of you has received a copy of this report today and I would be happy to come back at any time if you wish, or to receive any phone calls or letters. I'm more than happy to talk to you about anything you want to know about it. I would like to do that. In future, if I can, I'd like to come before you on a formal basis.

When I appeared in competition for this position in 1999 before this very committee, partially constituted as it is today but not completely, in my closing remarks I said, when expressing why I thought the Office of the Ombudsman was important, that the Ombudsman is about fairness and if it isn't about fairness, what is the



purpose of democracy? I am here today on what I consider to be a fairness issue to present before you with respect to what I consider to be disparate impact of two separate programs of the Ministry of Health and Long-term Care.

1610

I should tell you that the process for this committee in the past, under its other iteration as the Ombudsman committee, was that if the Ombudsman had an issue of significant importance in his or her view that was not able to be resolved by the Ombudsman and the ministry, then it was open to—is open to—the Ombudsman, by the legislation, to take the matter to the minister as well as the ministry and, failing at that stage, to the Premier. The practice has been that if it's not solved, then it is to come before this committee and the matter is to be put before you in an effort to persuade you to accept the rationale of the Ombudsman.

This investigation involves two programs, one being the program which has existed since 1985, the northern health travel grant, which deals with persons who must travel more than 100 kilometres in northern Ontario to their regional hospital to be assisted in travel costs. It pays 30.5 cents per kilometre, one way, for the purpose of attending, and that's for any specialized medical practice that isn't available in their own community.

The Cancer Care Ontario radiation re-referral program is a temporary program—not permanent as the northern health travel grant has appeared to be—created in April 1999 because Cancer Care Ontario informed the government that they believed there was a looming crisis in the treatment of prostate and breast cancer radiation procedures in that people were not able to be treated. The Canadian radiation oncologists had said that four weeks was the preferable time within which, once diagnosed, radiation treatment should commence. This program, which I must say I applaud the government for having committed to, is one that says that if a person in Ontario, wherever situated, is not able to be treated by their regional hospital within eight weeks, then they will be re-referred either to the United States, as it began, or to a hospital within Ontario that could receive them. They're quite separate programs created for quite separate purposes. A northern Ontarian is as entitled to this program as a southern Ontarian if the eligibility criteria are met.

The reason there has been a disparity is that southern Ontarians have been the larger users of the program by far because they had the regional hospitals which were overcrowded and unable to receive people within eight weeks. The northern hospitals have been able, on the whole, to receive their own patients from the north within the eight-week period and indeed receive re-referred patients from the south. Thunder Bay and Sudbury have both done that on a considerable basis.

I want to make it clear to you so that you will understand that I come forward with a finding that the effect of the two programs on this apples-to-apples comparison, that is, persons being treated for prostate or breast cancer

radiation treatment, has been one that I characterize as "improperly discriminatory." I do not mean those terms in human rights terms. I do not mean them in terms of the Canadian Charter of Rights and Freedoms. I am bound by the language of my statute and I am able to make a finding of "improperly discriminatory," and that, I believe, is what is appropriate here. The program, in my view, the juxtaposition of the two programs, means there is a failure to treat similarly situated persons equally when there is no suitable, justifiable or appropriate reason not to do so, and, second, an otherwise reasonable decision—and both programs are reasonable in themselves—or act adversely impacts on an individual or group of individuals for no good reason.

This has a fairly long history. The cancer care re-referral program began in April 1999, and there were quickly complaints from the north and indeed from Cancer Care Ontario itself, which passed resolutions that the northern health travel grant was inadequate to meet the needs of persons in the north going to their own hospitals for this treatment. Complaints have come to my office, and by last year we were starting to look at this and make inquiries by reason of those complaints and indeed the complaint—I'm entitled, in fact required, to take complaints from members of the Legislature, and I received one on this issue.

We made inquiries and, on December 1, I decided there was enough to conduct a formal investigation. That investigation went apace. We were amassing all our material and getting all our information, but it became apparent there was an outstanding report that had been ordered by the government. The government committed in the spring of 2000 to do a review of both the cancer care referral program and the northern health travel grant, and indeed expanded that review to all travel grants for health in the province. We began to understand that that report, which I believe was done within the ministry, was completed some time in the fall, and we asked for the report. The Ombudsman is entitled to all government documents unless specifically denied for a very particular reason.

We were not getting the document. We thought that since it was, we understood, completed, it would assist us in our investigation. The ministry started to tell us we were going to be denied it, it being subject to cabinet consideration. Finally, in January of this year I said formally, either give me the document or deny formally. One month later, on February 26, the Deputy Attorney General, on behalf of the Attorney General, denied me access to the report under section 20 of my act, as being subject to cabinet privilege, and so be it. There it is. I don't dispute the right to do it. I do comment, of course, that it has limited the scope of my investigation to the degree that I don't have that report.

However, by that time I was confident that I had enough information to come forward and take the position that I at least tentatively believed there was an unintended consequence between these two programs of unfair and improper discrimination between northern and



southern residents, both receiving radiation treatment for prostate or breast cancer. So at that time, on March 26, I completed my tentative report and I filed it with the ministry. What I do in these circumstances is say to the ministry, "Here's what I think I'm going to do, but I don't know whether I should do it until I hear from you formally as to what you think about what I'm saying I'm going to do."

We met with the deputy minister, Mr Burns, on April 23, and indeed with Mr Zegarac, who is present today and who will be arguing on behalf of the ministry. Some further months after that—two months after I gave my tentative report—we got the ministry response, which challenged some of our assumptions. We took those into account and incorporated them, but they did not dissuade me from my principal conclusion, and I went forward with my conclusion that this is improperly discriminatory, albeit taking into account the matters which I thought were appropriate.

Having received the ministry response on May 25, I filed my final report inclusions on May 31 with the ministry and the minister. I asked for a response within seven days. I received a response which did not do much more than frankly—it's before you, actually, in the materials I filed with the committee—thank me for my timely response to theirs, and that they are committed to continuing to investigate the travel discrepancies and so on. "We'll get around to it and we'll keep you informed." I then, as I am required to do if I wish to proceed, filed the matter with the Premier and then sought to come before this committee for the purpose of arguing the matter.

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I'd like to give you an example of how this discrepancy operates, in my view. A good many people were re-referred under the Cancer Care program from the south to both the United States and to the north of Ontario mostly. In the case of those re-referrals, I can tell you the numbers. These were only prostate and breast cancer re-referrals. The number of patients who were re-referred in Ontario during 1999-2000 was 227 persons, mostly from the south. By the way, the cost of travel, accommodation and food for those patients re-referred was \$956,535. The number of persons referred under that program to the United States for radiation treatment was 720, at a cost of \$3.2 million. Those persons were almost all southern Ontarians. When they were re-referred, whether to the States or to here—northern Ontario or elsewhere—all arrangements for their travel and their accommodation were made in advance by Cancer Care. It was done by the program. It was not the responsibility of the patient.

The northern health travel grant awarded a total of 97,000 grants over the same period of 1999-2000 for all purposes and spent \$9 million in doing that. But the total number of patient travel grants for radiation treatment—that is not limited, because they can't give me the breakdown, just to breast and prostate radiation—was 7,374 persons. The total expenditure for those 7,000 persons was \$517,651, that being at the rate of 30.5 cents per

kilometre one way. Of those, a number would have been and were radiation treatments for prostate and breast cancer.

So you can see that some 7,000 persons were compensated to a limited degree by the northern grant at the cost of half a million dollars, whereas 227 patients re-referred within Ontario by Cancer Care received travel, accommodation and food at \$956,000, almost double for only 227 people. Indeed, the 720 who went to the States cost over \$3 million.

Two examples, and one of the reasons this came before us: patients were starting to meet in the northern hospitals, Thunder Bay in particular. A woman from southern Ontario was being treated for breast cancer at the Thunder Bay hospital and had full flight, full accommodation and full meals for the period of her presence there. She started talking to other people. One of the people she was talking to was a woman from Red Lake. This woman from Red Lake was receiving the same treatment but under the northern health travel grant, because she couldn't get referred, because although she was a fairly long distance from her regional hospital, she didn't meet the criteria of having to go away from her own regional hospital. She had to travel by bus because she couldn't afford the airfare, which was \$882. It wouldn't have been much less from London or Toronto, I can tell you, for a southern patient. So she went by bus and she left Red Lake and travelled to Kenora for three and a half hours. Then she waited for several hours in Kenora until she picked up a bus at around 11 o'clock at night, or maybe a little later, and got into Thunder Bay in the very early hours of the morning.

She was paid \$196 for the shortest travel route by road at 30.5 cents per kilometre. She was not paid for food. There is, however, a program whereby—I understand we are informed but we haven't been able to confirm this, but I think it's true—all Cancer Care patients are provided accommodation—well, this is what we don't know for sure—at lodges, or if not available in the lodges, hotels, whether from north or south. But this woman, we don't believe, received that. So they were talking and all of a sudden of course there's a considerable disparity between these two cases.

Yes, the disparity is absolutely in accordance with the grants and the purposes of the grants, but there are people in like circumstances who are being treated quite differently and quite unfairly, in my respectful view. I can tell you that the complainants, when explained the different purposes of the grants, do not appreciate the distinction as being one that should apply to them, and neither do I.

I am concerned about time on this matter. The ministry has, I think you will be aware, moved to start after-hours radiation treatment for breast and prostate cancer at Sunnybrook hospital and has as a result of that program which began in January been able, in the middle of May, to stop re-referring people to the United States. So today people are only being referred within Ontario—either within southern Ontario or to the north.



I have a great deal of respect for the Cancer Care program, but its own board has criticized its impact on northern persons who have to travel considerable distances by reason of the north and who do not receive equitable treatment. Cancer Care is on record for some considerable time as having passed motions to that effect.

I am told by the ministry—and they'll tell you this themselves—that we need to look at what other programs are offered across the country, and we have done so. They assisted us; we did our own research. They claim that no other province does what we're proposing and that the programs are not discriminatory because everybody's eligible if they have to have it. Well, they're only eligible if they have to travel away from their regional hospital. But they may be travelling the same or greater distances in northern Ontario and they're not eligible.

My response to the proposition that other jurisdictions handle funding of similar travel similarly: I don't consider that comparison helpful to this investigation. My concern is whether the ministry is treating Ontarians suffering breast and prostate cancer equitably. It is not my role to inquire into the fairness of programs offered by other jurisdictions, and I do not believe that the existence of similar programs elsewhere justifies inequity in Ontario.

I think that at this point I should offer you the opportunity to ask me questions, because I do not want to run out of time. I'd like to give you the opportunity to question me if you wish.

**The Chair:** All right. Thank you, Mr Lewis. That was 20 minutes, so—

**Mr Lewis:** But not an hour.

**The Chair:** No, no. So we'll see how we go timewise for how long we spend on Q&A. Let's just—

**Mr Ramsay:** We'll just divide the time.

**The Chair:** Well, OK. We have to deal with one matter before we adjourn. We have to adjourn at 6, so if you want to divide the time of an hour and 15 minutes, that would take us to quarter to 6. Is that agreeable?

**Mr Ramsay:** We're dividing this hour.

**The Chair:** Yes, OK. But I meant overall. We need to do this equitably and still have 15 minutes left at the end, I was just reminded.

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**Ms Caroline Di Cocco (Sarnia-Lambton):** Just in comment, this is just a suggestion. In this hour, because you've kind of allotted one hour and one hour, so—

**The Chair:** But I forgot there was another motion to deal with.

**Ms Di Cocco:** If that's going to be the case, whatever time is left in this hour would be divided, and then when the ministry makes their presentation, however much time they take, what is left of their time would be divided. I don't know if that's reasonable.

**The Chair:** I'm sure it's fine.

OK, who from the official opposition? Mr Ramsay.

**Mr Ramsay:** Thank you very much, Mr Lewis. I was so happy to see you submit your report last week, because sometimes it's very difficult in this business on

the political level, where we just get into these political rants back and forth and maybe it appears to outsiders and others that this is just a political wrangle. One side says it's right and the other side says it's right. It's very comforting from time to time to have third-party validation, especially from the prestige of your office, coming forward and saying what many of us from northern Ontario from all political parties in the north have been saying, that this system is unfair.

We were having trouble over the last two years trying to find anybody from the north who had their travel funded through the Cancer Care Ontario program to southern Ontario, let's say. The most gross example would be the couple flying up from Toronto to Thunder Bay, at the same time crossing paths with, say, maybe that woman from Red Lake who might have had to go to more specialized treatment in Toronto, or somebody starting in Thunder Bay. They crossed paths in that airport.

It's our understanding that the most those people from Thunder Bay or elsewhere in northwestern Ontario could get would be \$420, yet if they couldn't book it early enough they'd have to pick up a \$1,200 ticket to Toronto. They have to find their way downtown, find their lodging, in contrast to what you have said, that going the other way it's all done for you. All the booking is done for you, besides the expenses being paid. They'd have to get their meals and they'd have to be staying in the most expensive city in this province. So that's a real galling example also.

**Mr Lewis:** They were all under the northern health travel grant—or were they under CCORRP?

**Mr Ramsay:** They were on the northern health travel grant and got \$420. What I'm saying is I'm not aware of, because we were trying to find this from Cancer Care Ontario—was this program, as you've said, available to northerners who, say, were being re-referred out of their area? Say you weren't getting your treatment in Sudbury or Thunder Bay; you had to go to Toronto, which is quite common, or Ottawa, for more specialized oncology treatments.

**Mr Lewis:** I'm not aware that it was not available to northerners. I understand that it was. I don't think it was often, in practice, available to northerners.

**Mr Ramsay:** No.

**Mr Lewis:** But you may have other information that I just didn't gain. You see, the problem is that the northern waiting period is not long enough to kick in the—

**Mr Ramsay:** The re-referral.

**Mr Lewis:** That's why they are able to take southern patients. Good for them. They get the business done. But there are so many people in the south, cramming up our hospitals, and properly so, that they need to be re-referred. It sounds to me as though people that you're talking about were in fact travelling under the northern health travel grant. They had to travel at least 200 km for it to kick in if they were going into the south, and they got 30.5 cents per kilometre. That's what they got.



**Mr Ramsay:** Like your office, we act as ombudspersons also.

**Mr Lewis:** Oh, of course.

**Mr Ramsay:** As a matter of fact, I wish we had a greater legislative role, but we don't. We actually tend to do a lot of what you do on a smaller level and we do what we can for our constituents. In my case, as I'm sure for all the members, it was getting complaints from our constituents that started this.

The example you gave was very similar to the one that was brought to me where a couple from Iroquois Falls was sitting in a waiting room in a doctor's office in Sudbury, being under similar circumstances, making friends with some people from southern Ontario and the southerners were saying, "Why don't you come out to dinner? It's kind of nice. We've got this nice program," and they're now scratching their heads and this is how they first found out about it.

This fellow, Mr Rene Boucher, from Iroquois Falls had called me, and I was absolutely shocked when I first heard about this. My first thinking was a charter challenge, because how can the government treat Canadians differently? I thought it was our right under the Charter of Rights and Freedoms that we should all be treated the same by our governments. Looking at that and trying to get lawyers is very expensive. That right is there for us to pursue but it's very expensive.

Then I decided to go to the Human Rights Commission of Ontario. Unfortunately, our Human Rights Code does not prevent discrimination based on place of residence.

**Mr Lewis:** That's right. It's not a protected ground.

**Mr Ramsay:** No, it's not a protected ground. I was hoping they would broaden the interpretation of "place of origin," which is a protected ground. I'm not a lawyer but I was hoping that under this circumstance they would really take a serious look at that. The travel originated in the north, the treatments originated in the north and there was certainly discrimination based, I thought, on place of origin.

The initial decision by the commission has been no. It's in appeal, but I think, as you say, because it's fairly clear-cut and because of the case law before it, it's not a protected ground and we're not going to get that, I presume.

**Mr Lewis:** Could I interrupt on one point?

**Mr Ramsay:** Yes, please.

**Mr Lewis:** I wouldn't want to mislead anybody. There will be people in the north travelling to the south for radiation and perhaps chemotherapy treatment who would only be able to travel under the northern health grant because this program, the Cancer Care Ontario radiation re-referral program, only deals with breast and prostate cancer. So it's quite possible that a prostate patient would run into a lung patient from the north and they would say, "That's terrible," but that's not apples to apples. I'm only interested in and I'm only pushing with respect to—I'm only dealing with the issue of those cancer patients suffering prostate or breast cancer who

are treated differentially. So I wouldn't want to mislead anybody by telling horror stories of others. That's a whole different issue as to whether the northern health travel grant is itself sufficient, but that's not what I'm dealing with at the moment.

**Mr Ramsay:** I'd like to ask you, do you think place of residence should be a protected ground so that in the future the government of Ontario could not discriminate against Ontarians depending on where they lived?

**Mr Lewis:** I like to see all persons within one government's jurisdiction being treated equitably, period. I do not think I would like to go as far as to say that place of residence, as you're discussing it, should be a protected ground. When you compare it to place of origin under the Human Rights Code, they're really talking issues of race, ethnicity and so on. They're not talking about the kind of issue we're dealing with here today, which is the problems of a huge province with very real differences between north and south and so on. I'd rather rephrase it, Mr Ramsay, and say that what I'd like to see is governments treat like people in a like manner, and that's what I think is not happening in this circumstance. Northerners, by reason of the rules of the Cancer Care Ontario redirect radiation program, are not being treated the way the southerners are.

**Mr Ramsay:** Could you suggest some vehicle so that we could build in some protection, though, in the future, so you can't get into these sorts of discriminatory programs by government? What would be the remedy?

**Mr Lewis:** I think it's in the power of government right now, by a stroke of the pen, to rectify this if they so choose on this particular issue. I wouldn't, on the spur of the moment, like to create a proposed "use every time" answer. There may be room for it but, I think, at rather limited cost—because this Cancer Care program is not going to continue forever. It is clearly starting to serve its purpose. They're getting rid of it. You don't have to go to the States any more. They're starting to reduce the number of re-referrals and they're obviously looking at an end game on this, if I can use such a crude term. I want this thing dealt with before that end occurs so that the people who are still being treated by it get treated fairly, and I'm concerned about the delays up to this point.

I have to tell you, I am concerned about the fact that a study of travel grants that was promised in September 2000 has not yet come to fruition and we can talk about it. I'm not talking about whether I was denied or not; I'm saying that study is complete and it's time that it should be acted upon one way or the other, whatever its findings might have been.

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These are vulnerable people, these are ill people, and I honestly have to tell you my belief is that people who are suffering like this are not interested in complaining; they're interested in surviving. They want to get their treatment, and many of them don't have the money to put up front, which is what they have to do here in the northern case.



**The Chair:** Mr Lewis—

**Mr Lewis:** Sometimes they don't have the energy even to put in for the reimbursement.

I'm sorry, Mrs Marland.

**The Chair:** That's all right. I'm trying to be fair to each caucus.

**Mr Lewis:** You're right. Thank you.

**The Chair:** We move to Ms Martel for her 10 minutes.

**Ms Martel:** Thank you, Mr Lewis. I want to begin by saying on behalf of the cancer patients on whose behalf we began the referral to your office last October—

**Mr Lewis:** I am very deaf and this is always a very difficult room for me. Could you speak up so that I can hear you?

**Ms Martel:** I wanted to begin by thanking you on behalf of the two cancer patients from Fort Frances on whose behalf we made the referral to your office last October 31. I have spoken to one of them who is thrilled by the decision. The other in fact has a reoccurrence of her cancer right now so I haven't had a chance to talk to her directly.

You will know how emotional this issue has been for over two years for northern cancer patients, and most people are just relieved that an independent third party has seen it as it is, which was their being discriminated against by this government.

Having said that, I noted what you said with respect to accommodation costs being covered by Cancer Care Ontario. There are two instances that I am aware of where that is not the case. I am not sure that you got all the information or the correct information in this regard. For example, the CCO would cover if the patients were already registered patients at a cancer treatment centre in Sudbury or Thunder Bay, but they had to be registered as outpatients already. In a number of cases, because people coming from Red Lake, Pickle Lake etc have to come so far, they would have to come on a Sunday afternoon to actually get registered on a Monday morning and have to stay in a hotel the night before—

**Mr Lewis:** I see your point.

**Ms Martel:** —and they were not covered. The same thing has happened from Iroquois Falls to Sudbury, because it happened to Mrs Boucher, to whom David already referred. The second instance is that if the lodges are closed on a number of weekends, because the lodge in Amethyst is actually closed on weekends, or was during a portion of this time, those patients were also not receiving the accommodation cost. So there were many people who were also out of pocket through this time for accommodation.

**Mr Lewis:** So the ministry's statement of the issue wasn't entirely complete.

**Ms Martel:** We could give them some other cases that were different; maybe I could put it that way.

Let me get right to the heart of the matter, though, because we have just the 10 minutes.

As I see it, there are two issues before us now. Number one, what does the Ministry of Health do right

now with respect to people who are receiving cancer treatment? My concern is that the ministry is going to argue that its re-referral program, in essence, is over because the last set of patients have already been referred to the United States and are probably in the process of finishing their cancer treatment now. So the ministry will not see fit to have a remedy for any other patients because people are no longer being re-referred to the United States; they are receiving treatment in their own centres, or if there is still a waiting list in their own centres they are being dealt with at Sunnybrook. So I'm concerned we won't have anything happen with the patients who are dealing with cancer treatment now.

My second concern—and it's one that you addressed at the press conference this morning and I was concerned by your response—has to do with those people who were discriminated against for the period April 1999 until June 2001, when the re-referral program was in existence. You have made a clear finding as improperly discriminatory and you have provided a remedy, except, as I see it and from what I heard from you this morning in the press conference, that remedy was not asked to be applied retroactively. I believe it should have been and it should be now applied retroactively. I don't believe it's enough to say that there was discrimination and then not provide a remedy for those who were discriminated against.

My question to you would be why you did not make a recommendation with respect to retroactivity. My second question, because I have a proposal for you to consider, would be whether or not you have that opportunity to offer a remedy now with respect to those who were discriminated against in the past.

**Mr Lewis:** May I respond by saying this to you on the latter point, not the accommodation issue. You've given me information with which I wasn't familiar and I think the ministry should address that about people who aren't getting lodging.

I would not ask for retroactive payment for the very reason you've raised about the program possibly coming to an end. I was very concerned about the time it was taking for me to get the response by the ministry on this case, OK? I didn't want to be too late getting here. I felt I didn't have a clear view of how to position a request as to how retroactive payments could be made, because it would involve receipts and proof of purchase of meals, accommodation, food and travel.

But primarily I thought it would give the ministry a reason to take longer to answer me, and I thought that if I waited, it would be too late and I wouldn't be here, because I have not felt this matter has moved expeditiously. I see the matter as urgent. I took it on in December—I took it on in October when I started to look at it, and then decided there was enough meat to go forward formally. I felt it wouldn't take too much to snooker my getting to this stage and I didn't want to be snookered. I'm sorry if that sounds harsh, but I was concerned about that and I did not want a pyrrhic recommendation. So I came with what I've got.



I will say this to you: should the government agree with me that fairness dictates that any person still to be treated in the north should receive the same payment, and should they then decide on their own to apply such a program retroactively, I would certainly fully support it. It would not be a wrong thing to do. But I haven't advanced it, for the reasons I've stated.

**Ms Martel:** I appreciate your comments and I can only say that that's so horribly unfair. I'm not talking about you, I'm talking about that the ministry could delay to such an extent that people who were already emotionally suffering from dealing with cancer were also financially penalized and that added to their emotional burden. It's not right that we cannot look at a program now that will get them what they are entitled to.

I will make the following proposition to you and I'll make it to the Ministry of Health as well, and I hope you will support me. This government did retroactive payments in 1996 to people who had suffered a financial penalty. I'll give you the example. All of us will recall when the government shut down the family responsibility regional offices and clearly the new office was not open. All of will recall the cases that were raised and the many women and children who suffered because they did not receive their support payments. At that time, after that occurred, the Attorney General established a program to consider reimbursements for individuals who experienced a financial penalty, ie NSF charges etc, because of payment delays during those months. These cases would be decided on a case-by-case basis. I gather what the Attorney General did at the time, on their phone lines and using other mechanisms, was to let recipients know that if they had been adversely affected because they had not received the payments they were entitled to, they could have their costs covered.

I am proposing to you, and I'm going to propose it to the Ministry of Health, that the same thing be done with respect to the cancer patients who were affected in a retroactive manner. It can be done in the following way: the two cancer centres in Thunder Bay and Sudbury would have on record every northerner who had to travel to those centres for radiation treatment for breast and prostate cancer during that over two-year period. They would have those as records; they would have their addresses.

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I believe it's incumbent on the ministry through those two cancer treatment centres to contact every one of those individuals who had treatment at that time to let them know there is a program of reimbursement available and to put the onus on them to provide information with respect to accommodation, travel, gas, food etc, but at least give them the opportunity to apply. I think it is horribly unfair that we have a finding of discrimination and no remedy for people who have been affected in the last two years. I'd ask you if that is a program you would consider supporting and endorsing with the ministry.

**The Chair:** Ms Martel, that is 10 minutes. I think, Mr Lewis, you will have an opportunity to reply to the question as we proceed.

**Mr Lewis:** You don't want me to answer that right now?

**The Chair:** Even with the ministry. We're going to run out of time.

**Mr Lewis:** I can do it in 30 seconds.

**The Chair:** OK.

**Mr Lewis:** If the government were to feel that I in fact was correct that, although unintended, disparity has existed, and discrimination, and it ought to be rectified, clearly if they made that conclusion, they would then permit those who yet have to be treated in the north for this during the time of the Cancer Care program—they would treat them equally. I could not say to them they should not treat those who had previously been treated. So I would have to support it if the government wished—I believe what you're saying, that it would be improper—to pay the others if they could establish their case. Yes. I couldn't deny that in the light of my findings.

**Mr Tascona:** I thank you for being here today.

**Mr Lewis:** Thank you, Mr Tascona.

**Mr Tascona:** For the record, your report was dated May 31, 2001.

**Mr Lewis:** Yes, sir.

**Mr Tascona:** How much time was given to the Minister of Health to respond to it?

**Mr Lewis:** Seven days. But his deputy of course has had the matter under his advisement since December 1 and indeed had my tentative report for two months.

**Mr Tascona:** OK. How much time was given to the Premier to respond to the report?

**Mr Lewis:** Three.

**Mr Tascona:** Three days?

**Mr Lewis:** Yes.

**Mr Tascona:** I read with care your report and certainly appreciate the effort that has gone into that. But just for the record, I noted that you didn't take the position that the Charter of Rights and the Ontario Human Rights Code applied.

**Mr Lewis:** Oh, no.

**Mr Tascona:** I think what we're dealing with here, to put it into the correct phraseology, is differential treatment.

**Mr Lewis:** I have to use my statutory language, and my statutory language is "improperly discriminatory." I can make certain findings, you know, like "error" and so on. The Ombudsman's office has over the years defined what that means—"improperly discriminatory: a failure to treat similarly situated persons equally when there is no suitable ... or appropriate reason not to do so; and an otherwise reasonable decision or act adversely" affects. These are reasonable decisions. It's how they impact that I'm dealing with. But, you're right that they're not human rights issues.

**Mr Tascona:** Let's focus on that, then.

Is there a geographic exclusion to the Cancer Care Ontario—



**Mr Lewis:** No, there is not.

**Mr Tascona:** Let me just finish the question, then.

**Mr Lewis:** Oh, I'm sorry.

**Mr Tascona:** We have a little experience in that. I'll just ask the questions and you can just respond. Let me finish, though, because it does sound like we pre-recorded this, but it was not.

Is there a geographic exclusion to the Cancer Care Ontario re-referral program? In other words, does it cover some areas of the province but not others?

**Mr Lewis:** No.

**Mr Tascona:** OK, and call it CCORRP for the terminology here. What are the criteria for the Cancer Care Ontario re-referral program?

**Mr Lewis:** They require that the regional hospital for the patient not be able to initiate radiation treatment for breast or prostate cancer within eight weeks of identification.

**Mr Tascona:** Are you challenging the eligibility criteria?

**Mr Lewis:** No, not at all.

**The Chair:** Mr Arnott.

**Mr Ted Arnott (Waterloo-Wellington):** First of all, I want to thank you for coming today.

**Mr Lewis:** Thank you, Mr Arnott. It's a pleasure to see you.

**Mr Arnott:** As I think everyone knows, it's our obligation as a committee to listen to your point of view and your opinion that you put forward today on this very important issue and then hear from the Ministry of Health and make a determination as to which of the two sides—

**Mr Lewis:** Yes.

**The Chair:** Mr Arnott, would you mind speaking a little closer.

**Mr Arnott:** I've got a bad cold, Madam Chair, and I'm sorry, but my voice isn't as strong as I wish it was.

I want to follow up on a question that Mr Tascona raised. Mr Tascona is a lawyer, as you are, and I'm not. I'm talking about the difference between what you characterize as improperly discriminatory based on the standards the Ombudsman's office has put together. Obviously there's a different interpretation or a different definition of what "discriminatory" means in terms of its relevance to the Human Rights Code or the Charter of Rights and Freedoms. Can you explain that a little bit more in layman's terms?

**Mr Lewis:** The Charter of Rights and Freedoms and the Human Rights Code deal with prohibited grounds of discrimination. We're not dealing with a prohibited ground of discrimination here. That's what I was discussing with Mr Ramsay. This isn't a case of racial discrimination or sexual discrimination, whatever; this is a case of my applying my act. I have a statute passed by this House that sets out that I can make certain findings that an act of government or the civil service is in error, it's wrong, it's unreasonable, it's improperly discriminatory.

That's one of the statutory grounds. It's not defined, but it means something, and what does it mean? I do not

believe it means a Human Rights Code type of discrimination. That's not what was intended. It is something less than that, in my respectful view. I want to continue to emphasize that this is an unintended consequence. This was not a deliberate thing that was set up by government, to treat the north differently from the south on breast and prostate cancer care. I'm not arguing that at all. I'm saying that the implementation of the program by reason of the crowded southern hospitals and the less crowded northern hospitals has resulted in persons from the north travelling like distances and getting compensated considerably less and in a manner that is less helpful to them because they don't get it in advance, it's not done for them. They have to seek reimbursement, small as it is, at a later point.

**Mr Arnott:** Thank you very much.

**Mr R. Gary Stewart (Peterborough):** Good afternoon, Mr Lewis. You can see that I've been demoted here and we have a new Chair.

**Mr Lewis:** I hear you got another position, Mr Stewart. Good for you.

**The Chair:** The new Chair rules with a much harder hand than I did.

**Mr Lewis:** I found that out.

**Mr Stewart:** Just a couple of questions. This was established in 1985. Are there any different circumstances now than there were in 1985?

**Mr Lewis:** Yes.

**Mr Stewart:** In what way?

**Mr Lewis:** The Cancer Care Ontario redirect radiation program, re-referral program, is the difference.

**Mr Stewart:** Funding is not different, though, as far as assistance in travel.

**Mr Lewis:** I'm sorry. Say that again, sir.

**Mr Stewart:** Funding for assistance in travel for the north and south after eight weeks: is it any different now than what it was in 1985, when this first started?

**Mr Lewis:** No, but my point—

**Mr Stewart:** Maybe I'm not making myself clear. North coming south, you've got to wait eight weeks, and south going north, you've got eight weeks to get assistance, as I understand it.

**Mr Lewis:** Yes, that's right.

**Mr Stewart:** In the north they get assistance to go from A to B within that eight; in the south they don't. Was that any different in 1985 when it started than what it is now? Has there been any change in assistance for travel in that number of years?

**Mr Lewis:** The only way I can answer it is to say that the creation of the Cancer Care program is the catalyst for difference, and that occurred in April 1999. If there hadn't been a crisis in breast and prostate cancer treatment, the southern hospitals would have continued and the northern hospitals would have continued and the northern health travel grant would have operated in its manner the way it always has, I guess. What happened was, the creation of this special program to benefit all Ontarians had an effect of getting people in the north treated differently in terms of compensation for travel for



the same disease and treatment as was the case for persons in the south.

It wasn't set up to do that; it's the effect of it. The persons in the north see themselves, and I think with some reason, as not treated fairly, because they don't discriminate between north and south; they discriminate in terms of distances and the impact of their travel on them. So it's the creation of the Cancer Care program—which was a good program to create. I applaud it for being created. The government funded it because of the Cancer Care request, a need to meet a looming crisis. But it's had a differential impact.

1700

**Mr Stewart:** I'm not trying to split hairs on this thing, but we're talking discrimination. I wish the heck we weren't even talking about this. I wish to God there was no cancer in this whole country. But do you feel under your interpretation of the discrimination that the southern patients are discriminated against as well because when they travel within the south, they do not get any assistance at all? The terminology of discrimination is what I am—

**Mr Lewis:** Yes, I understand. May I answer that now? I can understand perhaps a southerner saying, "But the northerners are going to get paid 30.5 cents a kilometre one way for going from Red Lake or Fort Frances to Thunder Bay. If I have to travel from Windsor to Sunnybrook hospital here, why don't I get 30.5 cents?" I can say, on its face, yes, that's a distinction, but it's a distinction that was created and it's not the one that I am addressing, at least not today. It could happen, Mr Stewart.

**Mr Stewart:** I shouldn't have brought it up, eh?

**Mr Lewis:** Now you've given me the idea. The northern health travel grant was created as a recognition of the particular problems of persons in the north and the impact of distance on their having to travel outside their own communities for specialized care. They just can't get enough hospitals and they certainly can't get enough specialized doctors into smaller communities in the north, so people have to go to the Sudburys and the Thunder Bays. It was a proper effort, I think, to try to remedy a reality of the north.

Let me give you an example: civil servants—

**The Chair:** We're almost out of time, Mr Lewis, to be fair.

**Mr Lewis:** All right.

**The Chair:** Actually, each caucus has had 12 minutes each, and I'm trying to be fair. I would like to thank you, Mr Lewis and Ms Crean, for coming before the committee today. Whether or not you return will be a decision of this committee.

**Mr Lewis:** Do I get to listen to the Ministry of Health?

**The Chair:** Of course. It's an open, public meeting.

**Mr Lewis:** Will I have right of response to the Ministry of Health, if I feel it's necessary?

**The Chair:** You know, I think we could go on till Christmas if we kept doing that.

**Mr Lewis:** Not necessarily.

**The Chair:** I invite the representative of the minister, who is the member for Niagara Falls. Mr Bart Maves is the parliamentary assistant to the Minister of Health. So if you wouldn't mind moving, then I'll have Mr Maves—and I think, so we can move more quickly, if the ministry staff who are going to take part would come up to the table so you're at the mikes in case you are speaking, please.

**Mr Lewis:** Will you grant me an indulgence? I will not hear if I sit behind. Could I sit there?

**The Chair:** Yes, by all means.

**Mr Lewis:** Thank you very much.

**The Chair:** From the ministry, if you would introduce yourselves for the sake of Hansard, starting on my extreme left, please.

**Mr Kevin Finnerty:** My name is Kevin Finnerty. I'm with the communications branch of the Ministry of Health and Long-Term Care.

**Ms Sandy Nuttal:** My name is Sandy Nuttal. I'm with the health care programs and the program consultant to Cancer Care Ontario.

**Mr Bart Maves (Niagara Falls):** Bart Maves, the MPP for Niagara Falls and the parliamentary assistant to the Minister of Health.

**Mr George Zegarac:** My name is George Zegarac. I'm the executive director of the integrated policy and planning division in the Ministry of Health and Long-Term Care.

**Mr Maves:** Thank you very much, Madam Chair and members of the committee. On behalf of the minister and the Ministry of Health and Long-Term Care, I'm pleased to appear before the committee today to hear the final report of the Ombudsman. I would like to thank him and his staff for their work.

We take the findings of the Ombudsman very seriously and are pleased to have this opportunity to discuss the issues that surround the travel assistance programs in Ontario. I will deliver some opening remarks on behalf of the ministry and do my best to answer questions about the programs. These ladies and gentlemen from the ministry who have much more experience with the programs will assist when necessary as we endeavour to answer the questions of all the committee members.

From a ministry perspective, our mandate is clear: we are committed to providing the specialized health care people need, when they need it, as close to home as possible. In trying to fulfill this commitment, we face two key challenges, and we have for many years in this province, one being geography and the other being the distribution of medical specialists.

The problem of geography is obviously felt most keenly in the north, a vast area with a population of 877,000 people in 169 communities spread over 867,000 square kilometres. To help overcome the barrier of distance, and also to improve access to specialized health services, we have developed a number of special programs and incentives. These include, among others, funding the northern health travel grant, the NHTG program,



establishing regional health services in major centres in the north that provide a wide range of specialized care, and developing strategies to recruit and retain specialists.

The problem of medical specialist distribution can be felt anywhere in the province, not just in the north. The most serious medical consequence of the distribution problem can be longer waits for service. In particular, Ontario has experienced problems with waiting times for cancer radiation treatment in certain parts of the province. This is an enormous concern for the ministry. Addressing the needs of cancer patients has always been a top priority for us. That's why Cancer Care Ontario developed a temporary referral policy known as CCORRP, or the Cancer Care Ontario radiation re-referral program.

In 1999, when Cancer Care Ontario recognized that some of its regional cancer centres were unable to meet the current need for radiation treatment, the agency developed the radiation re-referral policy, or CCORRP. Cancer Care Ontario designed CCORRP as a short-term measure to help ensure that all patients who require radiation treatment are treated as quickly as possible. The policy pays the travel costs for breast and prostate cancer patients who can't be treated at the treatment centre in the region where they live, otherwise known as their home cancer treatment centre. Until recently, this often meant re-referral to centres outside of Ontario. Since April 1999, Cancer Care Ontario has re-referred over 2,600 Ontario breast and prostate cancer patients. Approximately 36% of these patients have been accommodated at other Ontario centres, primarily in Thunder Bay. More than 1,600 patients have been treated in the United States.

As of May 15, 2001, all newly referred patients are now being treated at Ontario facilities. Cancer Care Ontario has stopped re-referring cancer patients to the United States for radiation treatment, largely because of the success of the after-hours radiation clinic at the Toronto Sunnybrook Regional Cancer Centre. We are very pleased with this development. It means that Ontario patients are being treated by Ontario doctors in Ontario. But as Ontario patients continue to be re-referred within the province, the Ombudsman's report remains on the table.

So how do we reconcile the Cancer Care Ontario re-referral policy with the northern health travel grant? They are two separate programs with distinct purposes, objectives and criteria.

1710

The northern health travel grant is available only to people who live in northern Ontario. The northern health travel grant helps defray some of the travel costs for northern residents who must travel long distances to receive medically necessary insured special services within Ontario or Manitoba.

When it was first established in December 1985, the northern health travel grant was available to all northern Ontario residents who had to travel more than 250 or 300 kilometres for medical care, depending on where they received it. In 1991, the ministry reduced the distance

requirement to 100 kilometres in northern Ontario and Manitoba and 200 kilometres to other parts of the province, to encourage patients to seek specialists in the north. In 1994, the ministry replaced its grant payment categories with a set payment per kilometre based on the actual distance between a patient's residence and the nearest specialist or facility.

The northern health travel grant is a long-standing permanent program. The northern health travel grant, as opposed to the Cancer Care Ontario re-referral policy, applies to any type of specialized care. CCORRP, however, is a temporary program specifically designed to address radiation therapy waiting lists. CCORRP pays travel, food and accommodation costs for breast and prostate cancer patients in Ontario who are unable to receive timely radiation treatment at their home cancer care centre.

It's the timeliness of treatment that essentially is what determines eligibility for CCORRP. If you would have to wait for cancer treatment at your home centre in excess of eight weeks, you become eligible whether you are in northern Ontario or southern Ontario. The key to CCORRP is timeliness. Anyone who is going to wait more than eight weeks for treatment becomes eligible for CCORRP. The eight-week standard is a clinical guideline established by Cancer Care Ontario to ensure that breast and prostate cancer patients get care within a medically acceptable time frame.

Southern Ontario patients who can receive treatment within an eight-week period at their home centre are not eligible for travel assistance of any type. That support is reserved exclusively for residents of northern Ontario. Only southern patients who must be re-referred away from their home treatment centre become eligible for CCORRP funding. The northern health travel grant and CCORRP are clearly two completely separate and distinct policies.

Looking at these policies in comparison with the larger national context, we find little guidance. Many other provinces, such as Alberta, Saskatchewan, Quebec, New Brunswick, Nova Scotia and Prince Edward Island, do not offer travel assistance programs of any kind, and no province or territory provides full compensation for travel, meals and accommodation. Ontario has the largest program in the country, both in number of annual claims and total expenditures.

Of the six other provinces and territories that provide travel assistance, Ontario's northern health travel grant program is generally comparable in terms of its goals, patient eligibility, escort eligibility and restrictions. The northern health travel grant differs, however, in its efforts to encourage the use of services in the north.

Looking at CCORRP, Ontario is one of five provinces offering a temporary cancer re-referral program. The others are Manitoba, Newfoundland, Quebec and New Brunswick. Alberta also had a temporary program, which has now ended. In both Manitoba and Newfoundland, like Ontario, these programs provide greater financial support than their permanent travel assistance programs.



Like other provinces, Ontario's radiation re-referral policy is a temporary, short-term measure designed to deal with capacity problems. Our program is also comparable to the programs in other jurisdictions in terms of standard wait time, the reason for re-referral, patient eligibility, the form and extent of assistance and the types of travel covered.

Although Ontario compares favourably to other areas in the country in terms of travel assistance, we believe we can do better. That's why the minister and the ministry made a commitment last year to review both the northern health travel grant and CCORRP. We decided to broaden our review to include all travel assistance programs in Ontario. This enlarged project has developed a number of options that are currently under review.

We don't want to eliminate the positive effects of the northern health travel grant program, a program which has succeeded in promoting the use of special services in northern Ontario and has encouraged more specialists to practise and remain in the north, but we are committed to finding a broader, province-wide travel assistance program that addresses the needs of northerners and southerners alike, both now and into the future. I believe everyone in this room shares that commitment.

As we move forward with our current review, we will be happy to keep the Ombudsman and the members of this committee abreast of any new developments.

I would now ask any of my fellow members at the table if they have anything to add before we open it up to questions.

**Mr Zegarac:** If I could add a couple of points of clarification in terms of the scope of the report, just to confirm that the report focused on breast and prostate cancer patients. So it's narrowed down to those categories. As Mr Maves indicated, the cancer referral program was actually designed and operated by Cancer Care Ontario, not by the government. The northern health travel grant program is a government-operated program. Those were just points of clarification I wanted to add.

**The Chair:** We have about 33 minutes, to 10 to 6, and then it would be the equal amount of time that we spent with Mr Lewis. That's 11 minutes per caucus. We'll start with Ms Martel.

**Ms Martel:** Let me make a couple of comments first and then ask some questions.

This is a temporary program that went on for 26 months. I would argue there's nothing temporary about that. During that whole 26 months, northern cancer patients suffered not only the emotional trauma of trying to deal with cancer, but they suffered a financial penalty as well, which I believe the Ombudsman has clearly identified. I heard the word "temporary" about 10 times, and I just think that is a sad excuse in terms of trying to defend a program that clearly has been discriminatory.

Secondly, Mr Maves, you talked about other grant programs in other provinces. I'd refer you back to the Ombudsman's report where he says on page 9, "While I appreciate the ministry's position that the CCORRP and the northern health travel grant should be considered in

light of how other Canadian jurisdictions handle funding similar travel, I do not consider such a comparison particularly helpful to my investigation. My concern is whether the ministry is treating Ontario breast and prostate cancer patients equitably. It is not my role to inquire into the fairness of programs offered by other jurisdictions, and I do not believe that the existence of similar programs elsewhere justifies inequity in Ontario."

He also said at the bottom, "Although I appreciate the ministry's position that the northern health travel grant and the CCORRP are separate and were created for different purposes, I do not believe that this excuses the resulting disparity. A situation now exists in Ontario in which similarly placed individuals are not treated equally."

My final point has to do with the document in question and your comment that there will be a "broader ... travel assistance program." I think the committee should know that the minister first made a promise about a broader review of the northern health travel grant on May 8, 2000, in the Legislature in response to a question raised by my leader where she said, and I quote, "In 1999 we did review the entire issue of the northern health travel grant, and I'm very pleased to tell you today that we are prepared to review it again this year."

The document in question that the Ombudsman tried to get hold of, and that I have been trying to get hold of through freedom of information since September 13, 2000, was a document that was completed in August 2000. We have had a document about this disparity that has been completed since August 2000. We have had a minister who promised a review since May 2000 and we have no new program in place. This has gone on long enough. I don't want to use the word "resent," but I am not happy that the ministry would come here today and argue, "We're going to do something shortly. We're going to have a broader program." Nothing has happened on this dossier, and it would be inexcusable to use a program that might appear some time in the future as justification for not doing something about the Ombudsman's recommendations right now. That's what I want to return to.

1720

My first question would be, does the ministry accept the conclusion that was made by the Ombudsman, that is, that the Ministry of Health and Long-Term Care's omission to provide equal funding for breast and prostate cancer patients who must travel for radiation treatment is improperly discriminatory? Does the ministry accept that as a conclusion?

**Mr Maves:** First of all, let me say to some of your earlier comments that anyone in northern Ontario who had to travel for cancer care from 1985 to the present has received the northern health travel grant as long as they've travelled over a certain distance. That assistance was not available to anyone in the rest of the province who may have had to travel a long distance for cancer care. So that assistance has been there for them for quite some time. Never, between 1985 and 1995, did they



receive more than what was available to them in the northern health travel grant. That was something that was consistent across all of the previous governments.

Second, we feel it's important to talk about provincial comparisons because quite often, in every issue—in education and in many issues in health—we use comparisons of other provinces to our own as a measure of what types of services, what quality of services Ontarians are getting in comparison to other Canadians and in some cases people in other countries, in other jurisdictions.

I think it's a fair comparison. It's always fair to do that. We did that this morning in the public accounts committee, where the auditor talked about his budget and compared it to other provinces, and it's fair. I understand and heard the Ombudsman's comments about that, but we still believe it's fair to talk about the different types of programs and compare ours to other provinces.

**Ms Martel:** But that wasn't my question.

**Mr Maves:** I realize that, but you made statements that I'm trying to get at.

**Ms Martel:** It's not a tough question.

**Mr Maves:** The question about the Ombudsman and his comments talked to an apples-to-apples comparison. When you do an apples-to-apples comparison, anyone in Ontario who is facing not receiving cancer treatment within eight weeks is eligible for CCORRP. So in that sense, under CCORRP, it is a program that is open to anyone, whether they're in southern Ontario or northern Ontario. Southerners in Ontario who are going to have cancer treatment inside of eight weeks and have to travel for that receive nothing. Northerners in Ontario who are going to receive cancer care within eight weeks do receive the northern health travel grant. So in that sense, on an apples-to-apples, anyone in Ontario, whether they are from the south or the north, who is facing receiving cancer treatment outside of eight weeks is treated the same.

**Ms Martel:** OK. But my question was, does the ministry agree or disagree with the conclusion that was reached? I'm going to come back to that because I didn't get an answer.

One of the other things the Ombudsman pointed out, and I'd like you to respond to this, was the fact that in many cases these northern cancer patients were travelling farther to get to their home cancer treatment centre than were southern Ontario re-referral patients when they were referred to a second centre for treatment.

I'll give you a couple of examples. Donna Graham from Pickle Lake had to travel 525 kilometres one way to Thunder Bay for her cancer treatment. She travelled farther by car in the north to access cancer care at her home cancer treatment centre than any southern Ontario re-referral patient who went from Toronto, London and Hamilton to Buffalo, Cleveland, Detroit or Kingston.

The second example: Lorraine Newton lives in Kenora but she has to come to Toronto, so she has to go to Winnipeg to catch a flight to be dealt with here. She travelled farther by car just to get to Winnipeg than a southern Ontario re-referral patient who went from

Toronto to Buffalo, from London to Buffalo or from Hamilton to Detroit.

Elizabeth Boucher, who is from Iroquois Falls, travelled 360 kilometres one way to Sudbury for cancer treatment at her home cancer treatment centre. She travelled farther by car to do that than a southern Ontario re-referral patient who went from Toronto to Buffalo or Kingston, from London to Buffalo or Detroit, or from Hamilton to Buffalo, Detroit or Kingston.

The final one, Gladys Whelan, who had to go from Fort Frances to Thunder Bay, 336 kilometres, travelled farther by car to get to her nearest cancer treatment centre than a southern Ontario re-referral patient who was referred from Toronto to either Buffalo or Kingston, from London to either Buffalo or Detroit, or from Hamilton to Buffalo, Detroit or Kingston.

There is an inequity here. Many of the northern patients travel farther every day just to get to their nearest cancer treatment centre than did the southern re-referral patients. There's nothing fair about not compensating them and recognizing that.

The other thing that Cancer Care Ontario did was to recognize that these patients shouldn't suffer a financial burden too. That's what they said when they established the program for southerners. That financial burden exists for northerners too, and I think the Ombudsman has demonstrated that.

**Mr Maves:** The current government subsidizes those patients the exact same way as did your government and the Liberal government before that with the northern health travel grant for treatments within eight weeks. We've always recognized, since December 1985, that northerners face added difficulties in accessing health care because of where they live, and that's why we have the northern health travel grant. All of those patients you referred to receive that northern health travel grant. If they were going to face receiving treatment outside of the timelines of eight weeks, then they would be eligible for CCORRP funding, which would be a richer program than the one they're already getting.

**Ms Martel:** But the Ombudsman has said that because they weren't eligible to receive that CCORRP funding, they suffered discrimination. That's clearly what he has ruled. Because they weren't eligible to receive the same 100% costs for accommodation, food and full travel, they suffered discrimination.

**Mr Maves:** But nobody receiving treatment inside of eight weeks is eligible for that compensation. Everybody getting treatment outside of eight weeks is eligible for that compensation. That's why we believe like people are being treated in like ways.

**The Chair:** I'm sorry, we're going to have to move to the next caucus.

**Mr Tascona:** Thank you, Madam Chair. You're dealing with this with a very fair hand, I may add.

Why is the government covering all expenses for southern Ontario patients needing care at the northwestern Ontario cancer care centre, while northern residents



who must travel long distances for medical treatment receive only part of their travel costs covered, Mr Maves?

**Mr Maves:** Cancer Care Ontario came forward to the government with a program and established a timeline-based program where anyone who was going to face receiving treatment beyond an eight-week period would receive special travel assistance under CCORRP, and anyone across Ontario, whether they're northerners or southerners, is eligible for that program.

Anyone in southern Ontario receiving treatment inside of eight weeks receives no compensation whatsoever for travel, accommodation or meals. Northern Ontarians travelling over 100 kilometres for getting treatment inside of eight weeks are eligible for the northern health travel grant.

**Mr Tascona:** Why are cancer patients from northern Ontario not receiving the same financial assistance southern Ontario cancer patients receive when they travel to Thunder Bay for radiation treatment?

**Mr Maves:** They are like patients. Those facing treatment outside eight weeks are receiving the exact same compensation package. They'd all be eligible for CCORRP.

**Mr Tascona:** Why did the ministry review the northern health travel grant program, and when will the report on the review be released?

**Mr Maves:** I can't really give you all of the background rationale of why we went down the road of reviewing it. Perhaps George could give more history on that than I can.

**Mr Zegarac:** The previous minister had heard a number of issues being brought forward, including some of the issues the Ombudsman brought forward today, plus other issues that patients from the south had brought forward in previous correspondence.

1730

The minister made a commitment that we would review it to look at whether we could come up with a travel program that could address some of the issues, again treating patients throughout Ontario in a consistent manner as much as possible given the clinical needs. That's the commitment the minister made and the government is conducting that review right now.

**Mr Tascona:** When is the report going to be released?

**Mr Zegarac:** My understanding is the report will be released, because it's part of a cabinet submission, as soon as a decision is made by government.

**Mr Tascona:** Is there any time frame on that?

**Mr Maves:** I can't talk about cabinet deliberations and I don't know a timeline for when cabinet will make a decision on the submissions that will be put to them by the Ministry of Health.

**Mr Arnott:** I want to compliment you, Mr Maves, and your staff for the clear and quite concise presentation to explain this problem. This has been an issue, as we know, before the Legislature for some considerable period of time, and I have followed it with a great deal of interest. As a member of the Legislature I have received a couple of letters from northern Ontario residents, but of

course my constituency being Waterloo-Wellington, I haven't been deluged with complaints perhaps as Ms Martel has been, or Mr Ramsay or some of the other members who have raised this.

But I find, when I look at the package that we've been given, the June 7 letter of the Deputy Minister of Health to the Ombudsman, which talks about the fact that the program is being reviewed and cabinet, as you have indicated, is perhaps looking at proposals—"We expect the review to be completed shortly. The ministry will continue to provide your office with further updates as we move forward."

I think there's a commitment there on the part of the Ministry of Health to work with the Ombudsman to address the issue that's been identified. I find that very encouraging.

I think I've got a fairly good understanding of the nature of the problem, but it would seem to me that there needs to be one program for the whole province which accounts for everybody, not two programs. I think it's maybe important to point out that Cancer Care Ontario is an arm's-length agency, intended to co-ordinate cancer services, independent of the government. Is that not correct, Mr Maves?

**Mr Maves:** It's correct, but the Ministry of Health had to agree to pay for the program after Cancer Care Ontario made a submission about bringing in this special temporary program.

**Mr Zegarac:** If I could comment on the temporary nature that Ms Martel referenced in her statement, the temporary program has actually been designed by the cancer agency and designated that way, and it's been designated that way in other provinces as well. The nature of the program is because we have shortages in human resources, so the hope is that this will be a temporary program. For example, in Alberta they have had some success and here in Ontario we're having success in getting human resources to replace the program.

**Mr Arnott:** It's our belief that the Toronto Sunnybrook Regional Cancer Centre and the after-hours radiation clinic that is there have solved the problem for now. What do we anticipate in terms of demands for cancer care services in the next year? Are we going to be in this situation again where we are going to have to re-refer patients to the United States? Is that our expectation? Do we do any kind of meaningful projections in that respect such that we could have some confidence moving forward?

**Dr Nuttal:** Clearly, cancer is a disease that's increasing in incidence and that's driven by the size and the age of the population of Ontario. It's not due to natural increases in the overall incidence of the disease.

But one third of all cancer patients will require radiation treatment, so we can imagine that the volume of service demand is going to increase into the foreseeable future, until we're in a position where we might discover a cure for cancer, and I suggest to you that's a very long way away.



Human resources are a key to ensuring that Ontario has the capacity to meet this demand, as well as physical resources. Ontario is well-resourced from a physical point of view. We have eight cancer centres. We're building five more. We will soon, by the year 2005, be close to operating 13 regional cancer centres around the province. So in terms of the physical capacity, it's there to meet the growing need.

The human resources are another issue. Cancer Care Ontario has been singularly successful in recruiting radiation therapists, medical physicists and radiation oncologists at a time when there is both a national and international shortage of these individuals. Over the past two years they have aggressively recruited, and because Cancer Care Ontario provides the facilities that are attractive to people outside of Ontario who want to come here, who want to be able to practise in Ontario, who want to be able to do research and who also want to be able to teach, Cancer Care Ontario is able to attract very high-calibre, high-quality individuals. That's why we've seen an increase in the human resources available to treat more cancer patients, because of Cancer Care Ontario's ability to do this.

The rather long answer to your very short question is that into the future there is a possibility that we may see wait times increase again. Cancer Care Ontario is being very vigilant in keeping close track of those wait times. The ministry will continue to support Cancer Care Ontario in its recruitment program because that seems to be, if anything, the weaker link in the supply-and-demand side of the equation.

**Mr Maves:** Can I just add, Mr Arnott, a few numbers? Sandy talked about the recruitment efforts of Cancer Care Ontario and that over the past two years they have been successful, with 227 radiation therapists, 16 medical physicists and 34 radiation oncologists having been recruited in that time span. In January 2001, 36 radiation therapists graduated from Cancer Care Ontario's interim training program and have been offered positions at Cancer Care Ontario. The next graduating class will be May 2002, with an expectation that up to 54 students may graduate from the joint Mitchener-University of Toronto degree program, and 78 students in May 2003.

**The Chair:** Mr Ouellette, we just have two minutes left.

**Mr Jerry J. Ouellette (Oshawa):** Ms Nuttal, you mentioned a percentage of increase. Do you have the percentages of volume, how they're going to increase and over what time period?

**Dr Nuttal:** Certainly I can give you those projections. This year alone, 50,000 Ontario persons will be diagnosed with cancer. That's likely to increase on average 3% each year.

**Mr Ouellette:** My other question is, we spoke quite a bit about the regions but we didn't discuss how regions were determined. Can you tell us how the regions or catchment areas for each of these areas when individuals have to travel outside the region are determined?

**Mr Maves:** For the northern health travel grant?

**Mr Ouellette:** Yes.

**Mr Maves:** That was set up in 1985, and I don't know if—

**Mr Finnerty:** The northern health travel grant was established, as Mr Maves indicated, in 1985. When it was initially established it was available to all northern Ontario residents who lived north of the French River and had to travel in excess of 250 kilometres in northern Ontario to Manitoba or 300 kilometres elsewhere in the province. That was then changed in 1991. The kilometre distance was reduced to 100 kilometres in travel in northern Ontario and 200 kilometres in the rest of Ontario. It is now a standard 100-kilometre distance for northern residents who have to travel and seek specialist assistance.

I think your question may be about who determines regions for regional cancer centres. I will ask Sandy to answer that question.

**Dr Nuttal:** Cancer Care Ontario is the agency that's responsible for determining where a cancer centre should go next and they make that recommendation to the Ministry of Health. To my knowledge, there isn't a particular set of planning parameters used by Cancer Care Ontario beyond population base. They don't use distance, for instance, as one of the determining factors as to where a cancer centre would go, but it is one of many factors that are considered. So when Cancer Care Ontario does locate a cancer centre, they do look very carefully at how far patients have to travel within a 30-minute to a 60-minute—beyond that range, as opposed to using kilometres.

**The Chair:** We'll move to the official opposition. Ms Di Cocco.

**Ms Di Cocco:** There are two issues. I want to focus on two matters: one is fairness and one has to do with accountability. My question about fairness is that the change that came about to redirect cancer patients provided, as I said, a result that the people in the north felt that they were not being compensated in the same way. If the criteria to provide compensation, not just for the care but also for the complete travel and accommodation, had that result in northern Ontario, do you believe that's fair? It's that simple: the question is, do you believe that's fair?

1740

**Mr Maves:** As I said before, anyone in northern Ontario accessing care within eight weeks receives the northern health travel grant, and people in southern Ontario don't receive that when they travel. Anyone, whether in northern Ontario or southern Ontario, receives the same package under CCORRP. So in that sense, that's fair because like people in like situations are being treated the same.

**Ms Di Cocco:** That's your interpretation, obviously. OK.

The other part is, you've got a review that was done in this regard—and this is the accountability issue. Why was that review denied to the Ombudsman?



**Mr Maves:** Simply because that review was being utilized for a cabinet submission. Section 20, I believe, of the Ombudsman Act outlines that documents that might involve the deliberations or proceedings of the executive council are not subject to disclosure. It's my understanding that the ministry will disclose that document once the submission has gone through cabinet and a decision on it has been made.

**Mr Finnerty:** If I could add just one point, a certificate was obtained from the Deputy Attorney General under section 20 of the Ombudsman Act attesting to the fact that this was indeed part of a cabinet submission.

**Ms Di Cocco:** So you're saying definitely now that the Ombudsman doesn't have a right to look at this document.

I'm going to ask the same question Ms Martel asked. The Ombudsman is an officer of the Legislature, a third party who is there for the benefit of all of us as MPPs, to bring fairness issues to our attention. His conclusion, after a fairly significant report here, stating that the treatment—the words used are “improperly discriminatory”: “The Ministry of Health and Long-Term Care's omission to provide equal funding for breast and prostate cancer patients who must travel for radiation treatment is improperly discriminatory.”

I just want an answer: do you agree with his comments or his conclusion?

**Mr Maves:** When I've addressed that before, and the ministry's position has been the same: when you're looking at apples to apples and like people in like situations, then the policy is applied evenly across all people. The CCO program is a timeline program. There are certain medical consequences if you don't receive treatment within an eight-week period. So northerners get the northern health travel grant when they're within that eight-week period; southerners don't. Outside the eight-week period, everybody across the province gets the same CCORRP funding. In that sense, we think there's fairness in those two programs.

**Ms Di Cocco:** The other matter I'm just going to state one more time: are all reviews that are provided to address situations that are brought to the minister's attention, such as the one that was tabled which the Ombudsman was referring to, not accessible or provided for cabinet criteria, as you said, and therefore are not to be released to officers of the Legislature? Is that common practice?

**Mr Maves:** No. The Legislature passed the Ombudsman Act some time ago. The Ombudsman Act included section 20 which, as I stated before, provided that anything that's going to be used for the proceedings of the executive council is not subject to disclosure.

So when the ministry determined that review was going to be used for a proceeding before the executive council, then it became not subject to disclosure. Past governments that supported the Ombudsman Act clearly took this very situation into consideration when they passed that act. Many reviews that are done aren't utilized in cabinet submissions and therefore are released.

**Ms Di Cocco:** What was the purpose of the review? Why was it required? What was the intended use of it initially? Why was it requested? Could someone explain it to me?

**Mr Finnerty:** I can answer that question. Former minister Witmer made a commitment to review the northern health travel grant and the Cancer Care Ontario re-referral program, as Mr Maves and Mr Zegarac have indicated, in response to a number of concerns raised either in the Legislature or through media reports or letters, so the review focused on both programs I've just described.

The review was later expanded to consider all travel assistance programs province-wide, and that analytical work and review is still underway.

**Ms Di Cocco:** It wasn't intended to be a top-secret document for the use of cabinet, I presume, at that time? It wasn't intended to be out of the purview of the Ombudsman, if he should request it? That's what I'm trying to get at.

**Mr Finnerty:** At the time the minister committed to commissioning a report, it was more in terms of gathering facts—

**Ms Di Cocco:** Yes, and information.

**Mr Finnerty:** —conducting a review, reviewing both programs. I can't really speak to what the end point was supposed to be, but since I was part of the review committee, it was to examine the northern health travel grant and the Cancer Care Ontario re-referral program in the context of Ontario as well as similar programs that are offered in other Canadian jurisdictions.

**Ms Di Cocco:** Would it not have been of value to the Ombudsman, if it was a review, if was to gather information and to gather facts—that's what reviews are for, to give us information so good decisions can be made. Would that not have assisted Mr Lewis in his quest, I guess, for fairness in these matters?

**Mr Zegarac:** If I could comment, in the absence of having that report available to the Ombudsman, the ministry staff had offered to answer any questions the Ombudsman had. If I'm correct, the ministry actually provided other reports that had been conducted earlier.

**Mr Finnerty:** In fact we provided to the Ombudsman's office a report on the northern health travel grant program, a review of it that was conducted in July 1999 by the Centre for Rural and Northern Health Research at Laurentian University. We also answered other fact-based questions the Ombudsman's staff had. Mr Zegarac and I, as well as Sandy Nuttal, were interviewed by the Ombudsman's staff and answered any questions the staff might have had.

**Ms Di Cocco:** So this was a decision to—just a clarification, because I'm sure you've answered it: who made the decision not to submit, or not to allow, the Ombudsman to obtain this review or this report? Who made the decision?

**Mr Maves:** I think the deputy made a request to the Attorney General.



**Mr Finnerty:** The deputy minister made a formal request to the Deputy Attorney General to certify that the document in question was indeed part of a cabinet submission. That certificate was requested and obtained and was provided to the Ombudsman's office.

**Ms Di Cocco:** So the request was made through the deputy minister. The deputy minister made the request to the Attorney General, and the Attorney General said?

**Mr Finnerty:** The Deputy Attorney General provided a certificate attesting to the fact that the document in question was part of a cabinet submission. That's the process outlined under section 20 of the Ombudsman Act, which clearly states that any document that's part of a deliberation for the executive council is exempt from disclosure to the Ombudsman.

**Ms Di Cocco:** And that was signed off by the deputy minister of—

**Mr Finnerty:** The Deputy Attorney General.

**Ms Di Cocco:** The Deputy Attorney General signed off that this was now a cabinet document?

**Mr Finnerty:** That's correct.

**The Chair:** That completes the rounds of the three caucuses.

Do you have a question of the Chair, Ms Martel, but not of the deputations, because we're not starting another round.

**Ms Martel:** I understand we're not starting another round, and that's the very issue I want to raise, Madam Chair, because with respect to the last two answers the ministry staff provided, I watched both the Ombudsman and his staff in the back gasp in astonishment, so I have to think they have a different point of view and a different response to the questions that were just asked. In that respect, because I also have further questions, both for the Ombudsman and for the ministry staff, since this committee would meet again on a Thursday, I would be asking if we would have the opportunity to meet so we can continue this discussion on this important issue, certainly allow the Ombudsman and his staff some time to respond at least to the last two questions that were raised by my colleague from the Liberal Party.

1750

**The Chair:** Is that your motion?

**Ms Martel:** Yes, that this committee meet again to continue—I don't know if you want to call it the representation or the matter of dealing with the Ombudsman's report regarding his Investigation into the Ministry of Health and Long-Term Care's Funding for Breast and Prostate Cancer Patients who must travel for Radiation Treatment.

**The Chair:** Who would you invite to take part in that?

**Ms Martel:** I would respectfully request that the Ombudsman and his staff and the ministry staff reappear next week.

**The Chair:** OK, that's the motion.

**Mr Tascona:** I would ask for clarification from the clerk. There is a procedure in terms of how these matters flow. The order, as I understand it, is that we hear from the Ombudsman and then, second, we hear from the

government organization involved, which today is the Ministry of Health. Is deviating from that procedure within the rules?

**Clerk of the Committee (Mr Doug Arnott):** It is up to the committee itself to determine its procedure. It has been the practice on occasion for the Chair to ask, after completion of the two presentations, if the Ombudsman wishes to make any further comment on any new material that has been introduced in the course of the governmental organization's presentation to the committee.

**The Chair:** I'm not about to ask that unless both parties get the same time. That's a decision I'm making as Chair. I think if it's going to be a rebuttal situation, it will continue, and if the committee decides to take more time and invite both parties back, as the motion says, then that's the motion that is on the floor at this time.

**Mr Tascona:** Let me ask for clarification, then, Madam Chair. How much time are we talking about, in terms of this clarification the member is seeking? If the House doesn't close before next Thursday, we have one session. How much time are you looking for?

**Ms Martel:** I would think, Mr Tascona, that I could have my questions dealt with—or raise them; maybe not have them dealt with—during next week's session.

**Mr Tascona:** I know. How much time are you looking for in next week's session? Because the next part of the proceeding in this matter is for us to consider the report—it's normally done in closed session—and make a decision on the Ombudsman's report. Then we have to report to the Legislature.

**Ms Martel:** Is there a timeline within which the Ombudsman's report has to be returned to the Legislature, Madam Chair? Is there a deadline for that referral?

**The Chair:** Apparently there isn't a requirement in terms of time that we have to report to the Legislature.

**Ms Martel:** Might I presume that the Ombudsman's report could be dealt with, if we didn't finish with our questions on this special report, at the next sitting of this committee, even if that sitting was in the fall? Is that correct?

**Clerk of the Committee:** That would be correct, if the committee agreed to continue its consideration.

**The Chair:** In which case I think Mr Tascona is asking you, Ms Martel, as the mover of the motion that is on the floor, how much time you are looking for.

**Ms Martel:** Let me answer it in this way: since there seems to be no requirement for the fuller Ombudsman's report to be tabled by the assembly at a specific time and we could deal with his report at another sitting in the fall, I would ask for the possibility of next week's session being devoted to this same issue for the whole period of time. Because I'd like to hear what the Ombudsman would have to say in response to what the Ministry of Health said, I can't tell the committee now what questions may be generated and how long that would take. Since I can't see that there's a deadline imposed anywhere for us to deal with his fuller issue, I would say to the committee that we anticipate dealing with this the whole time.



**The Chair:** Can you clarify for me? You're now referring to the "fuller report." Are you talking about his annual report or are you still on this matter that's before us now?

**Ms Martel:** I may have mistaken Mr Tascona's comments. I thought what he wanted to deal with next week was the annual report of the Ombudsman as well and he wanted time left for that next week as well. Maybe I misunderstood you. If I did, I apologize.

**Mr Tascona:** I think you did, because I never mentioned it. But I think that what I understood the Ombudsman to say today was that he felt there was urgency in dealing with this matter.

**Mr Stewart:** Just a comment: I think that we've heard two good presentations on the concern that's been brought up today. I think that if committee wants to discuss it within the committee, that's fine. I think to bring both parties back again for further discussion, it may be decided after discussion within the committee, but this thing's going to turn into a debate: your side, my side. I just don't think there's going to be any benefit to what we're talking about. I think we have to discuss it among ourselves, if we wish to. But to ask them to come back again, I think there's been full discussion. They've all had more than an hour and I think all the points have been gotten out.

**Ms Di Cocco:** I just want to say that I believe this requires some serious consideration, because this is an officer of the Legislature. Normally these reports are accepted in a way whereby there is an intent to address the recommendations. From the response that I've heard from the ministry, I think that there is a difference of opinion, at least that's my interpretation of the responses. I certainly would be in agreement to discuss, if you want to call it, the rebuttals and give them an opportunity to do that. I would agree with that proposal to sit and discuss the issue one more session before we rise.

**The Chair:** OK, now we've got to be careful. We're going to be out of time. Is there someone else who wants to speak to this motion? Or else I think we should deal with the motion.

**Mr Stewart:** Just very briefly, Madam Chair, you've got a report that's pending by the Ministry of Health on this that I understand is going to cabinet. I find it very difficult to make too many comments until that report is tabled.

**The Chair:** Mr Arnott, you had a comment?

**Mr Arnott:** I listened carefully to what Ms Martel had to offer in terms of her support for her motion. I understand she has some additional questions, maybe some additional issues she wants to raise. But I was just thinking in terms of next steps with respect to what Mr Tascona said about our natural inclination to want to deal with this issue and not put it off until the fall in terms of final consideration. The fact is this committee will not sit over the summer unless we are specifically ordered to sit by a motion of the House, agreed to by the House leaders.

**The Chair:** We will be sitting next week.

**Mr Arnott:** But after the House rises we won't be sitting, so there may not be an opportunity to discuss this again until the House resumes sitting in the fall. But if you have additional questions, would it perhaps be sensible to agree to some limitation on the time frame for those questions, such that we can still go into closed session, as has been the practice of this committee in the past, to deliberate and discuss what our recommendation is going to be before we come back into open session and have a motion, I guess, to decide the final outcome?

**Ms Martel:** If I might, I apologize to the committee members, because I'm not a regular member on this committee, so I don't know what the usual procedure is. I understand now that you need to go into a closed session to deal with what we've heard. I appreciate that and I apologize that I misunderstood.

I would be quite prepared, depending on what time we have, if we need to leave an hour for that closed session and consider the first hour for rebuttals, at least the opportunity for the Ombudsman to reply, as we would normally afford him that opportunity under other circumstances, and then another round of questions, perhaps to either of the parties at the same time. I think that would be fine and would give an undertaking that I would be finished and we would have time to go into the closed session and complete this next week.

**The Chair:** So you're changing your motion slightly to say to spend one hour next week with those parties. Is that what your motion is now saying?

**Ms Martel:** I was thinking if we started at 4, as we were this week, but—

**The Chair:** OK—

**Ms Martel:** Madam Chair, maybe I can be helpful: I'm going to assume there's going to be some kind of rebuttal, and I don't know how long that will take. That's the only reason I'm hedging on how much time. Why don't I just say whatever time we have next week, we split in half?

**Mr Tascona:** Let's be clear that this is not a hearing. We're here to hear both the Ombudsman and the Ministry of Health. If the Ombudsman has something else to offer and there are some questions on that, we can question. The same thing with the Ministry of Health.

We're getting into some order of proceedings here, that the procedure is very clear in terms of who speaks. So if we're going to hear from the Ombudsman, the next question is, "Are we going to hear from the Ministry of Health?" And then we're going to hear back and forth.

One hour to me doesn't seem unreasonable, as long as the House is sitting. If the House isn't sitting, we won't be here. But the thing is, one hour for clarification perhaps from both sides would mean to me that we'd maybe want to hear half an hour from the Ombudsman and half an hour from the Ministry of Health, if we're going to be fair in this. So if we're going to have an hour's time, I think you've got to split it between them.

**The Chair:** OK, we're going to have to deal with this.

**Ms Martel:** I'm assuming there's going to be some period for questions from the committee members, so my

suggestion would be that whatever time we have when start next week, we split that time in half. So the first period would be the open session, with any rebuttals, questions, or anything else, and the second half of the time for the closed, in camera session. How would that be?

**Mr Tascona:** I'm sure that Madam Chair can figure that out for us, but if it's one hour to deal with that, I'm quite content with that.

**The Chair:** OK, so the motion is now that next week's meeting, the 28th, will be to invite both sides back for half of whatever time is left when we get through routine proceedings, obviously at least an hour, and we will divide that time when we start, depending on what the time is.

OK, all in favour of that motion? Opposed, if any? That motion is carried.

Thank you, Mr Maves and the ministry staff.

#### COMMITTEE BUSINESS

**The Chair:** We just have one final matter to deal with and that was to approve the budget item—I'm just looking for the wording on our agenda. Mr Arnott?

**Mr Arnott:** Yes, Madam Chair, last week I moved a motion, after some discussion about our participation as a

committee at the national conference of state legislatures, which I understand again is being held this August. There were two dollar figures indicated. If the whole committee went, I think it was around \$30,000, and if it was just the subcommittee that was \$14,000.

The motion was passed that we would send the subcommittee. Upon reflection and discussion with other members of the committee, given the fact that we have a mandate from the House to pursue a study of parliamentary reform, in that context it's my opinion, and I think it's shared by some of the other members of the committee, that we probably should not participate in that San Antonio conference.

So what I'm intending to do is move a motion that we rescind last week's motion in terms of our participation at that conference and would just not send members this year to that particular conference.

**The Chair:** All right, so the motion is to rescind the motion of last week.

All in favour? That motion is carried.

Thank you very much, committee members, for your co-operation. This meeting stands adjourned.

*The committee adjourned at 1804.*











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## **Assemblée législative de l'Ontario**

Deuxième session, 37<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

Thursday 28 June 2001

# **Journal des débats (Hansard)**

Jeudi 28 juin 2001

## **Standing committee on the Legislative Assembly**

Ombudsman's report

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Thursday 28 June 2001

Jeudi 28 juin 2001

*The committee met at 1623 in committee room 1.*

## OMBUDSMAN'S REPORT

**The Chair (Mrs Margaret Marland):** Good afternoon. We will call to order the standing committee on the Legislative Assembly for today, Thursday, June 28. We welcome back to the committee Mr Clare Lewis, the Ombudsman, and also MPP Bart Maves, who is representing the Ministry of Health and Long-Term Care.

We obviously have an hour before the next bell, and I think the most logical way to proceed, if the committee members agree, is that we divide the time between half an hour for Mr Lewis and half an hour for the ministry, and then it would be 10 minutes per caucus within each of those half-hours. Is that acceptable to the members? Thank you.

Mr Lewis, we welcome you. Come forward, please.

**Ms Shelley Martel (Nickel Belt):** My apologies, Madam Chair. If you do it that way we won't have enough time to complete the report, so it's going to have to be less time. We had agreed that we would split this in half, with time being left to actually complete the report today.

**The Chair:** Your point is well taken. Do we have to move in camera to discuss the report at the end?

**Clerk Pro Tem (Mr Douglas Arnott):** That would normally be the committee's practice.

**The Chair:** Mr Clerk, can you tell me, do we allow 20 minutes at the end to discuss the report? So that leaves us 40 minutes and that, then, is 20 minutes for each presenting party, and we'll work out what 20 minutes each party divides into for each caucus.

Mr Lewis, you're welcome for 20 minutes.

**Mr Clare Lewis:** Thank you, Mrs Marland, members. I'd like to introduce Ms Laura Pettigrew, counsel at my office, to the committee.

With respect to your time limits today, I hope to be able to relieve you to some degree. I have almost nothing to say in response. Having heard the position of the ministry as expressed by Mr Maves and his colleagues, while well said, nothing was said that has not been put before me before in terms of the position of the ministry nor has anything been said that was not taken into account by me in arriving at my final conclusion. Therefore, I can simply say, with respect, that I've listened but I am not persuaded personally that my position is in

error. So I really have nothing more to say, subject of course to any further questions by the members. That was the way I felt as we concluded last week, but of course it's not for me to say.

**The Chair:** Then I think we'll just go to the rotation. It's approximately seven minutes per caucus.

**Ms Caroline Di Cocco (Sarnia-Lambton):** Just one quick question. What concerns me the most is the lack of access that you had in your review. That concerned me a great deal. For some reason now it's considered a cabinet document, I understand. I would just like your observations on that matter.

**Mr Lewis:** As I told you, it's in my report, and as I mentioned last week, the Deputy Attorney General on February 26 certified that the document I was seeking was a document, as he put it, which constitutes a matter of deliberation before the executive council and accordingly is not required by Ombudsman Ontario to be produced. That was the certificate which barred my access to the document.

I heard with interest—I wasn't going to raise it on my own—the position taken by Mr Maves and Mr Finnerty, I believe, last week on that. I've checked it in Hansard since, and while I find it interesting, I am not persuaded that their view of the reason for the denial of the document is one which falls within section 20 of the Ombudsman Act.

I guess I have to say to you, I don't know whether what they said is the actual reason, because that was between the deputies, as I recall. But I don't believe, and it's just my opinion reading the statute and reading what they said, that they established that the release of the document indeed in some manner, as the section of the act says, might involve the disclosure of deliberations of the executive council. I take it that deliberations of the executive council have to do with the debate and the minutes of council, not the reports that go before them. However, having said that, I made my finding without the document. I was certainly denied access—and maybe it would have helped me, maybe it would have stopped me, I don't know—but I didn't need it to come forward and I don't think that my reasoning would be—I can't say that it wouldn't have been weakened, but if you don't mind my saying so, I doubt that it would have been strengthened if it had supported me.

**Mrs Lyn McLeod (Thunder Bay-Atikokan):** In your report, in addition to the specific finding around the

inequity on the travel for cancer patients, you also dealt with a number of other issues related to the northern health travel grant. Is it permissible, Madam Chair, to ask one question about one of the other travel grant issues addressed in the Ombudsman's report?

1630

**The Chair:** Yes.

**Mrs McLeod:** I'm asking it as a northern member, because I noted with a great deal of interest that one of the cases you dealt with was one in which an individual had been initially denied a northern health travel grant because they had been referred to a physician and the decision was made initially that they could have seen a physician at a closer point. I think your office was able to successfully resolve that issue. I ask this in genuine interest. We have a number of those cases in our office. Does that stand as precedent, and how would you advise that we deal with other cases in our office that are similar? Shall we send them to your office? Is there now a precedent, an experience that we can refer to, or does your resolution of that specific case change the policy in some way?

**Mr Lewis:** As you know, Mrs McLeod, you as a member of the Legislature have a right under the Ombudsman Act to refer a complaint to me, and you can certainly do that and I invite you to do so, as Ms Martel did and others have.

Do we have a little expertise in this area now? Maybe. I don't know. Might we be able to help a person who was denied, perhaps in error? Sure, we might be able to. We would have to examine the specific facts. Does that address what you're saying?

**Mrs McLeod:** Yes, it does. We do have a number of these where there has been a referral to a physician for reasons that there isn't an appropriate physician closer. So they're often referred, for example, from Thunder Bay to Toronto or to Hamilton, and the travel grant will be denied because potentially there was somebody who held a similar title in Sudbury, which actually isn't closer as travel goes in northern Ontario, but that's another story. I would take it, then, that on the basis of your having dealt with that case we could refer similar cases to you. We just don't want to flood your office.

**Mr Lewis:** You could, in any event, but I'd be happy to assist if we can. For instance, I noticed in the Hansard—in fact it was one that you set out in the House the other day—I have it in front of me, actually, so maybe I can get right to it.

**Mrs McLeod:** A parent travelling with an infant who couldn't go in the air ambulance.

**Mr Lewis:** Yes, that's it, the one where she couldn't go in the air ambulance and she went by commercial air. I only read that yesterday, so I instructed my staff to inquire if we have a complaint on this. I don't know whether we could help, but it's the sort of thing that looks like it might be an Ombudsman issue. You may feel that it's something that's worth referring.

**Mrs McLeod:** Absolutely.

**Mr Lewis:** There you go. I'm not here shopping, I'm really not. I'm sorry.

**Mrs McLeod:** I noted with particular interest that you had successfully resolved that case, because it's one of the kinds of cases—we become very frustrated in our offices. Another issue, and I'm not sure if you've dealt with it, is the issue of referral out of province. In north-western Ontario that's often the closest referral, but they keep a list of physicians who are accredited, for some reason, and even though it's a fully accredited Manitoba physician, if it's not on the Ontario list, the travel grant is denied. I'm not sure if you've dealt with a case like that.

**Mr Lewis:** I don't know that issue, no. I would like to say, I'm not making any suggestion that there's—I'm not attacking the northern health travel grant, but, like any other program, there are from time to time problems in its administration. They arise, and we're here to assist if we can.

**Ms Martel:** Mr Lewis, I want just to begin by providing the committee with some information. Last week I said I was worried that nothing might be done before the re-referral program ended. So we checked with Cancer Care Ontario this morning and the staff there said that they actually have no idea when the re-referral program will end. It is true that they are not sending patients to the US any more, but there are patients being sent from all over Ontario. Last week, 21 went to Sunnybrook, but what is more interesting and more important to me is that five people were referred to Thunder Bay.

**Mr Lewis:** From the south?

**Ms Martel:** Two from Hamilton, two from London and one from Toronto were referred to Thunder Bay. This makes the need to do something even more important in my mind, especially because they could not tell us this morning when this program would end.

So I want to ask you a couple of questions with respect to your findings. The first is, you have made a finding of discrimination. Do you feel confident that this is a legitimate and valid finding?

**Mr Lewis:** Yes. I can be disagreed with, and I may even be argued with or proved wrong, but I certainly would not come before you with a finding that I did not have confidence in.

**Ms Martel:** Secondly, as a result of that finding, you made a recommendation to provide equal funding. Again, do you feel confident that that recommendation is an appropriate one to make to the government?

**Mr Lewis:** Yes.

**Ms Martel:** So if the government, in response, enhanced compensation for travel costs for northern cancer patients but still continued to provide funding for food, accommodation and taxis for re-referral cancer patients, would you say that would end the discrimination?

**Mr Lewis:** If they provided it to northern patients?

**Ms Martel:** No, if the government came forward and enhanced the travel for northern cancer patients—maybe went from 30 cents per kilometre to 35 cents, and that's all—but still continued to provide 100% of the costs for



the re-referral patients, would you say that the discrimination has ended?

**Mr Lewis:** No.

**Ms Martel:** OK. If the government introduced a completely new provincial program that provided travel costs for all patients who had to travel, but still continued to provide 100% of the costs for the re-referral patients, would you say that the discrimination has ended?

**Mr Lewis:** No.

**Ms Martel:** OK. So what does the government have to do to end this discrimination?

**Mr Lewis:** What I was urging or recommending that the government do is provide appropriate travel costs to northern residents who are travelling to their regional hospitals for prostate or breast cancer radiation treatment. For instance, in the Red Lake case, I would take that not to be 30.5 cents per kilometre one way, but rather the flight, which I think was \$882, which would be similar to coming from Toronto, accommodation in the same fashion that Toronto or southern residents would receive, food costs and any attendant taxis or whatever that might tie in with airports or buses and so on. Does that answer your question?

**Ms Martel:** Oh, yes. Do you feel that's a legitimate request to make of the government based on your finding of discrimination?

**Mr Lewis:** Yes.

**Ms Martel:** You told us last week that you were very concerned at the delay you experienced in getting a response by the ministry on this case. Can you explain to the committee why you felt that way?

**Mr Lewis:** The response was a long time coming, in my view. A meeting with the deputy on the issue and Mr Zegarac was, given what I considered to be the urgency of the need and the timing I requested for a meeting, a long time coming. We're not talking huge times, because I've certainly got other cases I could point to, but this is an urgent matter in my view and I was concerned about whether this is a really finite program, as you know, and I wanted to be able to address it within the time that it was still operating.

I didn't see a whole lot more in the response at the end of May than what I got in December. That's not entirely true. There was more to do with comparisons to other provinces and so on—I've commented on my view of that—but it was certainly new and it had been added to the material and property. I was concerned that—well, I think I made it pretty clear last week.

1640

**Ms Martel:** Just let me return to the former line of questioning. Given that you have told us what the government should do and given that I have told the committee that CCO has no idea when the re-referral program will end, do you think that the government should undertake to pay 100% of the costs as soon as possible, because clearly it is not a temporary program?

**Mr Lewis:** Yes, if I could say, I was interested in Dr Nuttal's comments last week, looking at the transcripts, which I read as being that cancer is an increasing issue

dealing with aging and the growing population, if I recall. That being the case, as she said, there may well not be decreases in the need, but rather increases in the foreseeable future. Yes, the root of my recommendation is that if a patient has to go today for their first treatment from Atikokan to Thunder Bay, they should be paid and they should be accommodated today in the same fashion as if they went from the south. So yes, I think it should be done soon.

**Ms Martel:** My last question: I know you didn't have a chance to deal with this, and you told the committee why last week, but should the government look at retroactive payments for those individuals who have been discriminated against, beginning in April 1999 when the re-referral program started?

**Mr Lewis:** Should the government feel that they were going to do it? Should they do it, is that what you're saying?

**Ms Martel:** Yes.

**Mr Lewis:** I think the way I phrased it last week, and I would repeat this week, is that if the government chose to do that as being proper, I would support their doing so. I think it would be consistent with what I've already said.

**The Chair:** Government members?

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** Thank you, Mr Ombudsman, for returning today.

**Mr Lewis:** It's a pleasure.

**Mr Tascona:** As I understand it, Ontario currently provides funding for two health-related travel assistance programs. First, the northern health travel grant, which was established in December 1985, and the Cancer Care Ontario radiation re-referral policy, which was established in April 1999. Do you agree with that understanding?

**Mr Lewis:** I do.

**Mr Tascona:** OK. As I understand it, and would you agree, these initiatives are separate programs with distinct purposes, objectives and criteria?

**Mr Lewis:** Yes.

**Mr Tascona:** In your opinion, was there any discrimination, as you define that term, before CCORRP was established?

**Mr Lewis:** Mr Stewart posited last week that perhaps the southerners could have considered that to be a discriminatory program, the northern health travel grant—

**Mr Tascona:** No, I'm asking your opinion. The question is, was there any discrimination—

**Mr Lewis:** I would say no. In fact, my position was last week, and it remains, that the activating issue was the creation of CCORRP.

**Mr Tascona:** So if CCORRP was discontinued, would there be a case for discrimination?

**Mr Lewis:** Not at the moment that I'm aware of. It's not my proposal, of course, Mr Tascona.

**Mr Ted Arnott (Waterloo-Wellington):** Mr Lewis, again, thank you very much for coming to deal with this for the second week in a row. We appreciate your time and the opinion that you put forward.



The thing I have a problem with is the definition of "discriminatory." To me, discriminatory means something where there's an intent behind it, or it's intended to be treating two different groups differently. As you said, I think, last week—if I recall correctly and can paraphrase—you would never accuse the government of deliberately—

**Mr Lewis:** I didn't say I would never do it, I said they didn't do it in this case.

**Mr Arnott:** You did indicate in your opinion that it wasn't intended to be discriminatory. It wasn't intended that way.

**Mr Lewis:** Right.

**Mr Arnott:** What is the legal definition of the word "discriminatory," or is there such a thing? That's my question.

**Mr Lewis:** Thank you for raising that issue. I think it's an important one. First of all, I have to say that I'm bound by the language of my statute, so I have to make my findings within one of the grounds that I'm entitled. It's not an error, it's not a mistake of law. What is it?

I felt that, given our view of what "improperly discriminatory" means as I described to you last week, this falls within it. In the evolution of discrimination law—granted that this isn't Ontario Human Rights Code and it's not Charter of Rights and Freedoms—acts can be discriminatory even if they are not intended to be discriminatory. What's intended is the act, not the effect necessarily.

That's the basis upon which I feel confident in making the statement I do. But it's also why I was at pains, I hope, to say on more than one occasion that it was clear that the government didn't set out to hurt anybody. They didn't set out to discriminate in the sense we're talking, but the effect is so, in my respectful view; and I believe it is perceived to be so by a very large number of residents of northern Ontario, particularly those who suffer breast and prostate cancer.

**The Chair:** Further questions from the government?

**Mr R. Gary Stewart (Peterborough):** I want to go back to what we were talking about the other day about discrimination against, possibly, the people in the south. I guess one of the things we have in the south is an absolutely phenomenal volunteer system. Certainly, the number of people who are assisting people by driving cancer patients back and forth to Kingston and back and forth to Toronto is absolutely wonderful, and I think that they should be complimented. It's something southern Ontario does well and very extensively.

But if I look at the elderly person who may live in Windsor and who may have to travel by train to Toronto to get treatment; she may be on a very, very fixed income, yet cannot apply for assistance, as I understand, within that. She can't because she's travelling within her area. Whereas, and I may be wrong, in northern Ontario they can do that. They don't get any assistance in southern Ontario up until the eight-week period.

**Mr Lewis:** Right.

**Mr Stewart:** In the northern part, I understand they get travel expenses—not total expenses, but some assistance.

**Mr Lewis:** That's true.

**Mr Stewart:** OK. Is that not a form of discrimination?

**Mr Lewis:** As I said to Mr Tascona—

**Mr Stewart:** I'm not trying to be argumentative; it's just that I have concerns about that.

**Mr Lewis:** I understand. No, I know you are, and maybe that's something that this long-time review will address, but it's certainly not the focus of my approach.

The northern health travel grant was created for very particular reasons that related to persons who live in the north and who, perhaps, don't have access to as many volunteers. They wouldn't have the same pool of volunteers to drive the huge distances that are involved. You know the trip from Windsor to Toronto is still only about 265 kilometres, but it's nothing to find it a 700-, 500- or 350-kilometre trip to a regional hospital of your own in the north. That's absolutely the norm.

In 1985 it was instituted, and governments since that time have treated the north as a special case. It's not such a special case in my view, given the relatively small amount that is provided, and I'm not making that as a criticism, but it's an absolute reality that it's 30.5 cents a kilometre one way. If Mr Zegarac goes up there and has to drive on government business, he gets at least that, if not more, both ways, to drive, as a civil servant, right? So it's not a lot of money. It's not the kind of difference that I think is going to trigger much animus in the south that they're being discriminated against because they didn't get it. That's all I can say to you.

**The Chair:** That's it for our three caucus presentations. Thank you very much for your attendance this afternoon, Mr Lewis.

Now I would call on the Ministry of Health and Long-Term Care. It's Mr Bart Maves MPP, parliamentary assistant to the Minister of Health and Long-Term Care; George Zegarac, executive director, integrated policy and planning; Kevin Finnerty, manager of planning and issues management, communications and information branch; and Sandy Nuttal, program consultant, health care program. Welcome.

1650

**Mr Bart Maves (Niagara Falls):** Thank you, Madam Chair and members of the committee. It's a pleasure for me to be back before the committee today to follow up our discussion on the northern health travel grant and Cancer Care Ontario's re-referral policy. Once again, I'd like to thank the Ombudsman and his staff for their work. As I said last week, we've taken this report under advisement and it will be, has been and is being considered in our current review of provincial travel assistance programs.

I would like to briefly review the two programs discussed in the Ombudsman's report because I want to leave time for questions, obviously. As I believe both Mr Lewis and I outlined last week, the travel grant program and CCORRP are two separate programs with distinct



purposes, objectives and criteria. The northern health travel grant is available only to people who live in northern Ontario. It defrays some of the travel costs for northern residents who must travel long distances to receive medically necessary insured specialist services within Ontario and Manitoba. It is a long-standing, permanent program established in December 1985.

The travel grant, as opposed to CCORRP, applies to any type of specialized insured health care. CCORRP, however, is a temporary program specifically designed to address radiation therapy waiting lists for breast and prostate cancer treatment. CCORRP pays travel, food and accommodation costs for all breast and prostate cancer patients in Ontario who are unable to receive timely radiation treatment at their home cancer care centre.

As I said last week, it is the timeliness of the treatment which essentially determines eligibility for CCORRP. If you have to wait for cancer treatment at your home centre in excess of eight weeks, you become eligible. The eight-week standard is a guideline established by Cancer Care Ontario to ensure that breast and prostate cancer patients get care within a medically acceptable time frame. Southern Ontario patients who can receive treatment within an eight-week period at their home centre are not eligible for any travel assistance. That support is reserved exclusively for residents of northern Ontario.

The NHTG, the northern health travel grant, and CCORRP are clearly two completely separate programs, and even though, as I stated last week, Ontario compares very well to other countries in terms of travel assistance, we believe we can do better. That's why the ministry and the minister have made a commitment to review both the northern health travel grant program and CCORRP. We decided to further broaden our review to include all travel assistance programs in Ontario. This enlarged project has developed a number of options that are currently under review.

As Minister Clement made very clear in the House this week, our ultimate goal is this: we want to create a province-wide program that addresses patients with a variety of medical needs across the entire province. We're committed to finding a broader province-wide travel assistance program that addresses the needs of northerners and southerners alike, now and in the future. Based on the comments we've heard from Mr Lewis and the members of the committee, I know we all share the same commitment. I will be happy to keep the Ombudsman and committee members informed of any new developments as we move forward with the current review.

I would also say, on a personal note, I will request directly to the minister that he direct the ministry to release the document in question as soon as it is no longer part of a cabinet submission, and that copies be sent both to this committee and to Mr Lewis.

**The Chair:** We'll move to Ms Martel. We're actually down to six minutes per caucus.

**Ms Martel:** I would say thanks to the parliamentary assistant. He should know that I first made a request for this document on September 13, 2000—this very same document—and now we are in the process of asking for it again as per advice we got from the privacy commissioner. We would be very happy to get it after such a long delay.

Secondly, I need to challenge again your use of the word "temporary." This program has gone on for 26 months now. I specifically checked with Cancer Care Ontario this morning to have an idea of when it will end, and the staff said they have absolutely no idea when they will stop re-referring patients. So there is nothing temporary about this program and there is no end in sight. That makes it imperative for this government to deal with the discrimination against northern patients.

The Ombudsman said very clearly he felt confident in his findings, he felt confident with respect to the recommendation he has made, and so I want to ask you, what does your government intend to do to provide equal funding for breast and prostate patients who have to seek radiation in northern Ontario? What specifically do you intend to do to equally fund them?

**Mr Maves:** Again, obviously our contention has been the same, that anyone who is facing receiving treatment outside of eight weeks, regardless of whether they're in northern or southern Ontario, can receive CCORRP, and only northern Ontario patients who have to travel to get cancer care treatment inside of eight weeks can get the northern health travel grant. We don't plan immediately to change those two programs, although as I have said, we are undertaking a review of travel programs province-wide. There's been a cabinet submission made by the minister, and that's why that document is part of that cabinet submission. Once it's gone through and met with approvals at cabinet, then the changes will obviously be made public.

**Ms Martel:** That has been underway since last May and we still don't have a new program before us. The reason I asked the question to the Ombudsman about whether or not having a travel grant program for all of the province would respond to his finding of discrimination was specifically to get his answer on record, which is that a province-wide travel grant program will not provide a remedy to the discrimination that he has already made clear to this committee. So I want to ask you again, is it your government's intention to equally fund northern cancer patients now in the face of the finding of discrimination that the Ombudsman has made?

**Mr George Zegarac:** I'm going to comment. The ministry is looking at a province-wide program. If there is a province-wide program, that assumes that the province-wide program deals with the re-referral issue. There wouldn't be two programs.

**Ms Martel:** Does the province-wide program include 100% of the costs of food and accommodation and taxi?

**Mr Zegarac:** I can't comment. The province-wide program is under review.



**Ms Martel:** So you can't give me a guarantee that the province-wide program is going to cover the same costs as are currently being covered by the re-referral program. Is that correct? You cannot guarantee me that.

**Mr Zegarac:** I can't comment, because I don't know what the decision of the government will be on what's included.

**Mr Maves:** In fairness, we can't talk about what may be in a cabinet submission at this point in time. We can't fully comment on that, obviously.

**Ms Martel:** We've been waiting for this change for almost a year now, and in the interim I think the Ombudsman has made a clear case of discrimination. I appreciate what you're trying to do, I say to the parliamentary assistant, to defend the government's view. But I asked the Ombudsman very specific questions today about his findings. I know about the two programs. I also know how many people are being discriminated against. That's why I was so pleased by his recommendation. The heart of the issue is this: does your government accept, take seriously, the finding he has made, which is one of discrimination? If you do, are you going to apply the remedy he has asked to be applied?

**Mr Maves:** As I said last week, we believe that like people in like situations are being treated in the same way. The key for CCORRP, again as we talked about last week, is a timeline issue, that anyone who's facing more than eight weeks to receive cancer treatment becomes eligible for CCORRP. That does not matter whether you're in southern Ontario or northern Ontario. If you're facing more than eight weeks, as was—it was radiation therapists, but I can't remember the name of the group. It's one of their key recommendations, and they used the eight-week period. Cancer Care Ontario wanted the timeline to be the key component of CCORRP, and it is.

**Ms Martel:** Except when you refer to like people in like situations, we have cancer patients in northern Ontario who have breast and prostate cancer. They go for radiation for breast and prostate cancer. And those same people with the same diseases see people in southern Ontario get 100% of their costs covered while they get a fraction of their travel costs covered. Same people, same disease, same treatment, but because they have to go to their nearest cancer centre instead of being re-referred, they get only a fraction of their costs covered. How can that possibly be fair?

**Mr Maves:** Because the only way that they only get the northern health travel grant when they have to travel for cancer treatment is if they're able to get it within an eight-week period. In southern Ontario people get nothing, not a nickel, not a dime, if they're going to get cancer care treatment inside of eight weeks.

1700

**The Chair:** Mr Maves, we have to move on. Mr Tascona?

**Mr Tascona:** We don't have any questions. We give our time to you, the Chair, to use as you wish.

**Ms Di Cocco:** I just have a quick question. Do you know how many people in northern Ontario have accessed CCORRP?

**Mr Maves:** I had that number in my binder last week, but I don't know the number—no one.

**Ms Di Cocco:** No one?

**Mr Maves:** Part of the reason for that is cancer services are much more readily available in northern Ontario. They're not at capacity, and part of the reason why southern Ontarians are sent to Thunder Bay is because they're not at capacity.

**Ms Di Cocco:** Have no cancer patients in northern Ontario been sent to Toronto or gone to Toronto?

**Mr Maves:** Not those facing an eight-week wait for services in northern Ontario.

**Ms Di Cocco:** It just seems remarkable to me. The fact that you say no one has accessed CCORRP indicates that's empirical evidence that obviously the people in northern Ontario who have not accessed CCORRP—are you suggesting, then, that although no one in northern Ontario has accessed CCORRP, the Ombudsman in his opinion is incorrect, in your view, in suggesting that there's discrimination?

**Mr Maves:** What it suggests to me is that it's empirical evidence that those northerners have better access to cancer services in their region, because they don't face an eight-week wait.

**Ms Di Cocco:** I'm sure we can get a list. I'm not from northern Ontario, but certainly, if we get a list of people who haven't been able to access cancer care in any timely fashion in northern Ontario and have gone to Toronto, they would know to access CCORRP. I can't believe that's the case. I have a difficult time believing that no one has gone from northern Ontario to another jurisdiction outside of their geographic area and accessed cancer care.

**Mr Maves:** George can comment on the actual process that they would go through to determine that.

**Mr Zegarac:** Cancer Care Ontario runs the program, so if there is somebody who is eligible, based on the clinical criteria that they've put forward, which is the eight-week waiting period—as Sandy said, it's their program. We're not aware of any northern patients who have qualified under the program and have received that assistance. But if they did qualify based on the criteria Cancer Care Ontario has, they'd be referred to the program and to the assistance.

**Ms Di Cocco:** I guess what alarms me is the fact that we have an Ombudsman who is, in my view, a third party who is analyzing the situation apples to apples. He's brought forward a finding, and I think an objective finding, because that's his role. I have to say that the current government has a very set agenda and that is to cut costs. That's a no-brainer. They've been doing this for the last six years. That's what drives their policies. We've seen that in evidence that's come forth currently. It's driven by dollars.

I'll just say it again. Are you suggesting, then, that the Ombudsman is wrong?



**Mr Maves:** What I would say is that CCORRP started in 1999, that no program ever existed like CCORRP before. We started that program and put the funding into it. The northern health travel grant was actually a program under the Liberal government and the NDP government and we funded it at the same level as the NDP government funded it. We haven't reduced that. Both of the previous governments saw fit to fund it at that level, and we see fit to fund it at the same level.

Finally, to the question of the temporary nature of the program, CCORRP would obviously end because it is a temporary program. We've always said it was a temporary program. It would end, and everyone has acknowledged and I think we said last week, once the human resources problem for cancer services is solved.

There's been a large recruitment drive underway by Cancer Care Ontario and there have been more spaces and more folks being educated to fill those spaces and solve that human resources problem. Once those people are disseminated in positions throughout the cancer services in Ontario, then there would no longer be an eight-week wait for anyone and the program would end.

**Ms Di Cocco:** But I guess I'm asking, is the Ombudsman right or is he wrong?

**Mr Maves:** We respectfully disagree in the sense that we believe that like people are being treated in a like fashion.

If I could, if there are 20 more seconds, in 1995-96 there was \$8 million spent on the northern health travel grant program. In 2000-01 we spent \$10.3 million on the northern health travel grant program, which is \$2.2 million more than the NDP government spent.

**The Chair:** Mr Maves, we're out of the six-minute time allotments. Thank you for your appearance with the staff this afternoon. The committee will now move in camera to discuss the report, if visitors could comply with that request by members, please.

*The committee continued in closed session from 1707 to 1728.*

**The Chair:** All right, we are now moving—will someone move us out of in camera?

**Ms Di Cocco:** I move us out of in camera.

**The Chair:** OK, moved by Ms Di Cocco.

There is a motion on the floor that was voted on in camera. I will read that motion so it can be confirmed in open session. The motion is to uphold the report of the Ombudsman—I will identify the Ombudsman's report as an Investigation into the Ministry of Health and Long-Term Care's Funding for Breast and Prostate Cancer Patients who must travel for Radiation Treatment. The motion is to support that report, as I have identified it, and to support the recommendation of that report. So there is no misunderstanding, the recommendation of the report is that "The Ministry of Health and Long-Term Care should provide equal funding to breast and prostate cancer patients who must travel for radiation treatment." Again, that's the motion on the floor. All in favour of that motion?

**Ms Martel:** A recorded vote.

**Mr Jerry J. Ouellette (Oshawa):** We've already voted on that.

**Mr Stewart:** We've already voted on that. We can't have a recorded vote now.

**Mr Ouellette:** We made it very clear that what was intended was the reporting of the voting once we came out of camera. You have changed what we are doing now. Why did we go in camera in the first place?

**The Chair:** To discuss the report.

**Mr Ouellette:** And to make a decision that is to be reported afterwards.

**The Chair:** A motion passed in camera has to be recorded in open session.

**Mr Ouellette:** Reported.

**Mr Stewart:** But not re-voted on.

**The Chair:** Mr Clerk, does it have to be voted on again? I thought you said it did.

**Mr Jean-Marc Lalonde (Glengarry-Prescott-Russell):** You cannot ask for a recorded vote in a closed session. That could take place only in an open meeting.

*Interjection.*

**The Chair:** Go ahead. Let's listen to the clerk for a minute.

**Clerk Pro Tem:** There are two uses of the word "recorded": recorded by the broadcast or recording system is one usage; recorded in the clerk's minutes of the meeting is a second usage. When the phrase "recorded vote" is used in the standing orders, it refers to the vote or division recorded by the clerk in the clerk's minutes. It is possible for there to be a recorded vote in a closed session meeting. It is not usual that the proceedings of a closed session are recorded in a clerk's minutes of the proceedings. However, if a committee directs that that be done, it can be done. Therefore, it would have been possible at the proper time to request a recorded vote in the closed session and for the committee to agree to direct the clerk to record that in the minutes of the proceedings. I could, for the committee, for the record, advise the committee of those voting in favour of and against the motion that was moved and defeated in closed session, if that would be suitable.

**The Chair:** Are you now saying, Mr Clerk, that it isn't necessary to confirm in open session a motion passed in camera?

**Clerk Pro Tem:** That's correct.

**The Chair:** I don't think that's what I heard in camera, so I don't think I'm the only person who is confused here.

**Ms Di Cocco:** If I could, just for one quick second: I believe it's important that I certainly understand the proceedings. I would request your indulgence, again, because it was my motion—I would like it recorded and stated, and a recorded vote on it.

**The Chair:** How do we have a record of that motion without Hansard?

**Mr Tascona:** Madam Chair, I think it's very clear what the rules are and what the clerk has indicated. What Ms Di Cocco wants to happen needs the consent of this committee. The purpose of going in camera is to consider



the report and decide whether or not to uphold the position of the Ombudsman. The next step is for the committee to present its recommendations to the Legislative Assembly in the form of a report. That's what we're dealing with here, the report we're going to present, not motions.

**The Chair:** Mr Clerk?

**Clerk Pro Tem:** As I suggested to the committee, if it is the committee's wish, I could advise the committee on the record, at your direction, of those voting in favour and against the motion that was defeated in closed session.

**Ms Martel:** Do I need to move that?

If I might, Madam Chair, in public accounts we deal in closed session an awful lot of the time for report writing, but we usually move into open session to record a vote. I assumed the same thing was going to happen in this committee. Otherwise I would have requested a recorded vote. So if the only way to actually have that occur is for me to move a motion that the clerk would now read into the record the results of that recorded vote, I would do that. If I had known this was going to be the case, I would have moved a recorded vote in the closed session too. But we don't normally do that in public accounts, so it would never occur to me to do it here. I didn't think there would be a difference between the two committees.

**The Chair:** There shouldn't be a difference between committees. I never recall recommendations dealt with off the record as standing motions that do not require reporting on the record, and that's how I have proceeded.

**Mr Ouellette:** Madam Chair, I find some differences in what took place in camera and what is taking place here. Ms Martel very specifically asked to be in full session for the ability to have a dissension listed at that time. If that was the case, then why would we move and be expected to move to a full vote in that time, which would have shown dissension at that time?

**Ms Martel:** I asked if I could write a dissenting report.

**The Chair:** She asked if she could write a dissenting report, and she was advised that she could by the clerk.

We are now in open session with a motion on the floor that I have just read. So I think I'm going to take the vote on the motion I've just read in open session, and then I will proceed at the direction of the members. Because right now—

**Mr Tascona:** That's not in order, Madam Chair, because if Ms Martel—

**The Chair:** Are you going to challenge the Chair?

**Mr Tascona:** The thing is, we just heard what the clerk said. For that to happen requires the committee's consent. If Ms Martel wants to put a motion out there to have happen what you're suggesting should happen automatically, we're quite prepared to hear her motion, we'll vote on it and we can move to the next step.

**The Chair:** There are two things. We have a motion on the floor now that's exactly the same as the motion we discussed in camera. That motion is on the floor. In addition to that motion, we have a member who may wish—I

haven't heard this in open session—to file a dissenting opinion. If you want to deal with the motion and then deal with whether or not that member has a right to file a dissenting opinion, then let's deal with it separately.

**Mr Tascona:** That's not an issue. If she wants to request a dissenting opinion, she can make that request after the results of what we did in closed session come out.

**The Chair:** All right.

**Mr Tascona:** You're asking to do it in reverse. We had the vote in closed session and we had a result. All you're here to do is report what happened, not consider other motions. We've already had our vote.

**The Chair:** We can consider any motions in open session until the meeting is adjourned.

**Mr Tascona:** Madam Chair, the thing is, we are supposed to report to the Legislative Assembly on what our findings of the report are.

**The Chair:** That's right.

**Mr Tascona:** We've voted on that. I would have thought we were going to report on what the findings were in camera, not entertain other motions that had already been voted on in camera.

**Ms Martel:** If I might, Madam Chair, I thought what we were doing would be reporting on the findings; that is, who voted and in what way. If I had known that was not going to be the case in the open session, I would have moved for a recorded vote when we were in closed session. The only reason I would feel I have to move a motion now is that it seems that's the only way to have consideration of a recorded vote in open session so it's on the public record. It is not my understanding, if I might, Madam Chair, that there would not be an ability to have a recorded vote in the open session. That runs contrary to other committees I have sat on—contrary.

**The Chair:** The committee is in session right now. I would suggest that any motion is in order until the committee is adjourned. If you have difficulty with dealing with the same motion that was dealt with in camera, it would be very easy to change the wording of that motion, if you want to do that, to change the wording of the motion by one word and then it's not the same motion.

**Mr Stewart:** Madam Chair, has it been recorded that a vote was taken in camera and that the result was that it didn't pass, period? If somebody now wants to make another motion on something else, that's fine, but we have already dealt with it. I would think it should be recorded now by just verbally recording what we did. If somebody wanted to have a recorded vote, they should have asked for it. I'm sorry. I would think that what we voted in camera should be recorded, and then you get on with where you're going from there.

**The Chair:** Mr Clerk, I want you to answer the question of Mr Stewart. Mr Stewart has asked, was the action of the committee in camera yet reported since we came back in open session?

**Clerk Pro Tem:** Members here have discussed in open session what occurred in the closed session. There



has been no recounting of the vote on the motion that was defeated in closed session.

**The Chair:** So, Mr Clerk, are you able to report what was dealt with in camera to the committee in open session?

**Clerk Pro Tem:** If that is your direction, Chair, yes.

**The Chair:** I'm asking you the question; I'm not directing you. I'm asking you the question. And if that's the case—

**Clerk Pro Tem:** The normal practice of the committee would be that the Chair would report to the committee and those assembled in the room the decision of the committee as arrived at in closed session.

**The Chair:** All right. I'll do that. Now that we are back in open session, I am reporting that in camera the following motion was placed and voted on. It was a motion by Ms Di Cocco that the committee uphold the report of the Ombudsman, identifying the Ombudsman report as Investigation into the Ministry of Health and Long-Term Care's Funding for Breast and Prostate Cancer Patients who must travel for Radiation Treatment, and support the recommendation of that report, which reads as follows: "The Ministry of Health and Long-

Term Care should provide equal funding for breast and prostate cancer patients who must travel for radiation treatment."

That motion was voted on in camera and lost.

**Mr Tascona:** I have a motion, Madam Chair.

**The Chair:** Go ahead.

**Mr Tascona:** I move that the committee respectfully disagrees with the recommendation of the Ombudsman and finds that the northern health travel grant and the Cancer Care Ontario radiation re-referral policy are separate programs with distinct purposes, objectives and criteria.

**The Chair:** Any discussion on that motion?

**Mr Ouellette:** Madam Chair, I believe we are allowed a recess before an actual vote takes place, and I would request a recess.

**The Chair:** You're asking for the 20 minutes to get the member's privilege. Is that what it's called, Mr Clerk?

**Clerk Pro Tem:** Yes.

**The Chair:** All right. The committee stands adjourned for 20 minutes.

*The committee adjourned at 1743.*

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### STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

#### **Chair / Président**

Mrs Margaret Marland (Mississauga South / -Sud PC)

#### **Vice-Chair / Vice-Président**

Mr R. Gary Stewart (Peterborough PC)

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Ms Marilyn Churley (Toronto-Danforth ND)  
Ms Caroline Di Cocco (Sarnia-Lambton L)  
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Mr Jerry J. Ouellette (Oshawa PC)  
Mr R. Gary Stewart (Peterborough PC)  
Mr Joseph N. Tascona (Barrie-Simcoe-Bradford PC)

#### **Substitutions / Membres remplaçants**

Ms Shelley Martel (Nickel Belt ND)

#### **Also taking part / Autres participants et participantes**

Mrs Lyn McLeod (Thunder Bay-Atikokan L)

#### **Clerk pro tem / Greffier par intérim**

Mr Doug Arnott

#### **Staff / Personnel**

Mr Andrew McNaught, research officer,  
Research and Information Services



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## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 11 October 2001

# Journal des débats (Hansard)

Jeudi 11 octobre 2001

## Standing committee on the Legislative Assembly

Ombudsman's report

Election of Vice-Chair

## Comité permanent de l'Assemblée législative

Rapport de l'ombudsman

Élection du Vice-Président



Chair: Margaret Marland  
Clerk: Donna Bryce

Présidente : Margaret Marland  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Thursday 11 October 2001

Jeudi 11 octobre 2001

*The committee met at 1548 in committee room 1.*

## OMBUDSMAN'S REPORT

**The Chair (Mrs Margaret Marland):** I'd like to call this meeting of the standing committee on the Legislative Assembly to order. The first business is to take the vote for the motion that we were in the middle of at the time that this committee moved the 20-minute adjournment to get the members. So we will proceed. It is a recorded vote and I will ask the clerk to take that vote now of those members in favour of the motion that is on the floor.

**Mr Ted Arnott (Waterloo-Wellington):** Could you read the motion, Madam Chair?

**The Chair:** Certainly. The motion reads as follows: "That the committee respectfully disagrees with the recommendation of the Ombudsman and finds that the northern health travel grant and the Cancer Care Ontario radiation re-referral policy are separate programs with distinct purposes, objectives and criteria."

## Ayes

Arnott, Dunlop, Gill, Munro.

## Nays

Di Cocco, Martel.

**The Chair:** That motion is carried. Will this report be reported to the House? All in favour?

**Ms Shelley Martel (Nickel Belt):** Is this a recorded vote as well?

**The Chair:** Ms Martel has requested a recorded vote.

## Ayes

Arnott, Dunlop, Gill, Munro.

## Nays

Di Cocco, Martel.

**The Chair:** That report will be reported to the House.

## ELECTION OF VICE-CHAIR

**The Chair:** The next order of business is the election of a Vice-Chair due to the change in responsibilities of Mr Gary Stewart, the previous Vice-Chair.

**Mr Arnott:** Madam Chair, it's my privilege to nominate Julia Munro for the position of Vice-Chair of this committee.

**The Chair:** Mrs Julia Munro has been nominated to be Vice-Chair.

**Mr Raminder Gill (Bramalea-Gore-Malton-Springdale):** I second that.

**The Chair:** It's seconded by Mr Raminder Gill. Are there any further nominations? All in favour? Mrs Munro is Vice-Chair. That is unanimously carried.

Is there any other business before the committee?

**Mr Arnott:** I move we adjourn, Madam Chair.

**The Chair:** All in favour of adjournment? That is carried.

We certainly will look forward to getting into some more business for this committee at the next meeting. I appreciate the promptness of the members being here today.

*The committee adjourned at 1551.*

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### STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

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Ms Lisa Freedman

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Thursday 1 November 2001

# Journal des débats (Hansard)

Jeudi 1<sup>er</sup> novembre 2001

## Standing committee on the Legislative Assembly

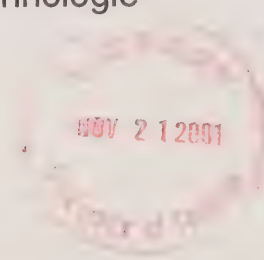
Subcommittee report

Use of technology

## Comité permanent de l'Assemblée législative

Rapport du sous-comité

Utilisation de la technologie



Chair: Margaret Marland  
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L'ASSEMBLÉE LÉGISLATIVE

Thursday 1 November 2001

Jeudi 1<sup>er</sup> novembre 2001*The committee met at 1550 in committee room 1.*

## SUBCOMMITTEE REPORT

**The Chair (Mrs Margaret Marland):** I would like to call this meeting of the standing committee on the Legislative Assembly to order.

First of all, I would like to report that I tabled the first report of the standing committee on the Legislative Assembly in the chamber this afternoon.

*Interjection.*

**The Chair:** No, that was the report I tabled in the House. Now, following that, Mr Duncan will move the subcommittee report.

**Mr Dwight Duncan (Windsor-St Clair):** Your subcommittee met on Thursday, October 25, 2001, and agreed to the following with respect to reforms that would expand the use of technology in the House and its committees:

(1) The committee will invite the Speaker and the Clerk to appear before the committee on Thursday, November 1, 2001.

(2) Following this meeting, committee members will be encouraged to canvass their respective caucuses with respect to their views on this issue.

(3) The committee will meet on Thursday, November 8, 2001, to continue their discussion on this issue.

**The Chair:** Any discussion on the motion? All in favour? That motion is carried.

## USE OF TECHNOLOGY

**The Chair:** We are privileged to welcome this afternoon the Speaker, the Clerk and the Clerk Assistant. Welcome to all three of you.

**Hon Gary Carr (Speaker):** I must say that I am looking forward to coming back into committee. It's been about two years since I've been in the committee. We're looking forward to it. I'm in your hands, Madam Chair. If you would like, our Clerk Assistant and Executive Director of Legislative Services could give a short introduction about some of the technology we have, probably less than five minutes, or we can go directly to questions, whatever the committee chooses.

As you may know, as Clerk Assistant, Deb is also the Executive Director of Legislative Services, which entails a lot of the technology we may be talking about. We can

do it either way: we can just start with questions, or Deb can do a short introduction and touch on things like some of the technology we presently have, some of the technical services, and then we would be pleased to answer any questions that any of the members may have on any of the issues.

**The Chair:** I'm at the wish of the committee. What would you like to do? Hear from Ms Deller?

**Mr Duncan:** Hear the presentation, yes.

**Hon Mr Carr:** With that, Deb will give us a short overview of some of the technology and some of the things you may want to take a look at. I think it will stimulate discussion on some of the issues you may want to take a look at in your deliberations. With that, I think you all know Deb.

**Ms Deborah Deller (Clerk Assistant):** I hesitate to start off by saying this, but I'll be brief. I just thought that maybe it would be a good idea to start with a little summary of where we are today in terms of technology both in the chamber and in and around the precinct.

In the House and committees, as you know, electronic devices are prohibited. They are prohibited by a series of rulings that were made by successive Speakers against the use of any electronic devices in the House, including cellphones, pagers, laptops, PDAs, anything like that.

From time to time in committee, at the discretion of the Chair of the committee, members have been allowed to use their laptops, and I think they have found it particularly helpful in committee when they're doing summaries of testimony from witnesses or even during the clause-by-clause consideration.

Additionally, laptops have been used in committees by research staff and from time to time by Hansard staff. There is a bit of a distinction between members using electronic devices and House or committee staff using electronic devices. Maybe the best example of this is that you'll notice we have intercoms on the table in the House—not telephones, intercoms. What that does is give us access to the Journals branch so we can deal with them in the preparation of the House documents for the following day. When staff are using a laptop or an electronic device, it is in the course of fulfilling their role and function with respect to the business of the House.

The technical services that are available: members will probably be very familiar with all the proceedings of the House and some committees being broadcast by means of OntParl network. They're available throughout On-



tario by cable or by satellite. Legislative Information Systems acquires and maintains computer hardware throughout the legislative precinct. They also provide and install hardware for your constituency offices. I think this past year they installed a second computer in the constituency offices at the direction of the Board of Internal Economy.

Software acquisition and maintenance for members, though, is kind of a mixture of services between Legislative Information Systems and the caucus system branches. Legislative Information Systems also maintains the Legislative Assembly network, again with caucus access to a greater or lesser degree depending on their own systems arrangement. For example, e-mail is available throughout the assembly, but not all caucus have chosen to be on that system.

Internet and intranet: the Legislative Assembly has its own Internet site. I'm hoping you're familiar with that. House documents are on it. They're posted along with information that's of interest to the general public: status of bills, visitor information, who's my member?—that kind of thing. The Legislative Assembly also has an intranet site, which you may be more familiar with. It's available in-house only. It also contains House documents, but it includes things like draft Hansard, which isn't immediately available to the public, for obvious reasons—it's a draft. It also contains a variety of administrative and research information for members and staff: the members' guide to services and benefits, the ballot list for private members' business and that sort of thing. MPPs and staff can access the Internet through personal accounts, and they are also accessible from the constituency offices now.

Some time ago, we in the Office of the Assembly recognized that there's a whole lot more we could be doing to improve both the Internet and intranet sites and in fact improve computer services throughout the assembly. In that regard we established a couple of committees. One is the Web management team, which looks at the content and style of the Internet and intranet. In addition to that, there's something I chair, called the information technology advisory committee.

We're kind of in baby stages right now, but we are reviewing our services and our content on the Web. We're also reviewing the installation of hardware, maintenance, all those kinds of things, to try to improve services, primarily for members but also for staff. One of the things we are working toward is trying to improve—and I hesitate to use this word as well—the interface of the information we have available on-line for members so there can be better manipulation of that information for whatever use you have.

The Speaker and the Clerk and I had some discussions about the use of technology in the chamber and in particular your mandate, which is to take a look at the enhancement or expansion of technology in the chamber. We're not entirely certain what kinds of things you would necessarily be talking about, but we've taken a stab at trying to guess.

## 1600

One of the obvious things is probably the use of laptops. In our view, the first thing the committee probably needs to do is to consider what they want laptops to be used for in the chamber. If the idea is to simply allow laptops in the chamber so that members are able to do office work on their own personal notebook computers or laptops, then that's probably a fairly easy thing to effect. It involves no costs or little cost to the Office of the Assembly, at any rate. There are no issues of wiring. The only thing that needs to be considered is that the Speaker would probably have to establish some guidelines for use, and I'll get to those a little bit later on.

If in fact what is in mind is members using laptops that are hooked up to the network so that they can easily send or receive e-mail or access the Internet, then there are other issues to consider. Does the chamber need to be wired? Should we go wireless? Consideration then also has to be given to the appropriateness of members receiving e-mail in the House or sending e-mail in the House and, in addition to that, accessing Internet sites. The Speaker again would still have to establish certain guidelines around that. The other thing to note is that that involves a higher level of cost for the Office of the Assembly, and the Speaker and the Clerk will both tell you that we don't, at this point, have the money to do that.

There is a third level of use for laptops in the chamber, and that is the use of computers in the chamber for the purpose of House business itself. For example, it may be that there is some advantage to members, if we ever go into committee of the whole again and do clause-by-clause, to be able to see amendments on their computer screen inserted at the appropriate place in a bill at the time they're actually being moved. That may be something that would be useful to the members, and it's certainly something that would avoid photocopying a whole pile of paper.

This is really something, though, that needs to be considered for a period of time and very carefully. It involves really all members having the same standard level of hardware. It would involve some investigation into the applications that are necessary in software. There would have to be at least some network between members in the House and the table, and there would have to be lots of discussion with legislative counsel around their involvement, because they are the primary drafters of amendments, and in fact the legislation itself. You'd still have the wiring versus wireless issues to deal with, and the Speaker still would have to establish certain guidelines.

The cost, in the case of that third option, really is quite large. Again, that's something that has to be considered in the context of the resources that are currently available to the Office of the Assembly, and probably there would have to be some consideration of putting something in estimates to forward that purpose, if that's where the committee's going.

In any of the cases that I've outlined, the Speaker probably will have to establish some guidelines for the



use of laptops in the chamber. Some of the guidelines that have been established in other jurisdictions and that you may want to look at are things like quiet keyboards—no sound options on the laptops or notebooks in the chamber—and when they can or cannot be used. For example, some jurisdictions have determined that it's inappropriate to use laptops or notebooks during question period. Others have decided that it's only appropriate to use them during committee of the whole.

The committee may want to consider issues of decorum. For example, maybe it's a good idea to say that laptops shouldn't be used if you're seated beside a member who has the floor and is speaking.

The other thing the Speaker would want to consider is, can those notebook or laptop computers be used for any purpose in the House, or should we restrict the use of things like e-mail in the House?

That's really a summary of our discussions on the use of notebooks or laptops in the House. That led to a discussion of PDAs or PalmPilots, the BlackBerry, whatever you want to discuss. I think in our view the same considerations as are given to notebooks and laptops apply. The only thing is that PDAs are possibly less intrusive and may be subject to less rigorous guidelines. I don't know.

The other issue that many jurisdictions, including this one, have discussed with respect to technology in the chamber has to do with electronic voting. There are all kinds of studies done by all kinds of jurisdictions, including Westminster and the Canadian House of Commons, on the use of electronic voting in their chambers, and to date most of those jurisdictions have declined to implement it.

I think if the committee is going to consider the use of electronic voting, it's probably a good idea to start by determining why we would want to implement it. Often the arguments in favour of electronic voting point to more efficiency in the process. However, with a small House such as ours voting, as you'll know, it isn't terribly time-consuming. The cost of installing and maintaining an electronic voting system is likely to far exceed any benefit that might result. That's really been the conclusion of many of the jurisdictions that have looked into electronic voting. Then again, if the motivation for going to electronic voting is to allow members an opportunity to vote virtually or from off site, then there are a whole bevy of other security and possibly constitutional issues that would probably need to be considered.

For us, in our discussions, we agree that it's usually easy to see the benefits of technology in general: it enhances the power to communicate; it has the potential to make us more efficient; it allows us to do more faster, although I'm not sure that's a benefit sometimes. What is more critical, though, to consider, especially in the context of expanding the use of technology in the chamber, are its effects and its consequences. Just as an example, in the case of electronic voting, does it make the voting process more efficient? Does it make it more or less transparent? Does it entrench or erode party discipline, and are there advantages or disadvantages to that?

In the case of laptops, do they enhance the work of the House and/or individual members therein? Will they improve or worsen decorum, or is decorum a whole other issue for debate?

I think if the committee were to start with some discussion of the purpose of the chamber and the role of the members in it and from there fully consider how technology can serve to support that function, that purpose and role, then maybe it serves to focus the committee on what technological changes, if any, it wants to recommend.

**Hon Mr Carr:** Just before we turn it over for questions, I wanted to add that I know you have research people, but if there's anything we can do to assist you in your deliberations and any questions you may have ongoing as you take up this challenge, we'd be pleased to assist in whatever way we can. As you know, we have some of the experts who can answer any of the questions you may have, and it would be our hope that you'll be able to come up with some things that may be of assistance. If you do, you're probably aware then that the committee can do the report, presumably it would be adopted by the House, and then we can proceed. We're certainly in the hands of the committee as to what you would like to see. We can probably make almost anything work, and we wish you well in your deliberations, because I think it's a very important question that you'll be looking at.

With that, Madam Chair, we'll open it up to see if there are any questions that might be forthcoming.

**The Chair:** Mr DesRosiers, do you wish to make any comments?

**Mr Claude L. DesRosiers (Clerk of the House):** No. I think all of the points have been accurate and have been well processed by Deborah and the Speaker, and they are the results of discussions that we've had amongst ourselves. Thank you.

**The Chair:** All right. Dwight?

**Mr Duncan:** The history of our parliamentary chambers and traditions, everything from the sovereign not being allowed into the chamber in Westminster to the Sergeant at Arms sitting toward the door and the bars at the door, is such that members can debate and transact the business of the House without influence from the outside. Is that correct? Physically we've attempted to prevent outside influences from coming to bear on the floor of the House.

**Mr DesRosiers:** That's basically been the discussion, yes, and that's been maintained by most Commonwealth Houses that have studied this.

**Mr Duncan:** One of the things that concerns me—and we have not caucused this—about the presence of technology, particularly technology that's either wired to the outside or is wireless but able to communicate outside the floor of the chamber, is influence from outside of the chamber. Would that be something members of the committee should consider seriously?

1610

**Mr DesRosiers:** I think so. One of the purposes of technology is just to communicate with the outside, and I



think the committee should stop and reflect on that, whether that is a desirable thing or not.

**Ms Deller:** If I could just add something to that, I think what you say is very true. In fact, a jurisdiction that has used technology extensively is the American jurisdiction. Many of the state Legislatures have electronic voting and allow laptops. Their system is different, though. There is more access to the members by lobbyists. Even with that, there still have been issues in some of the American state legislatures about the use of e-mail inside the chamber, and many of them have even restricted it because of outside influence on the floor.

**Hon Mr Carr:** Just to add something I actually hadn't thought of—it's a very good point to raise. As we were discussing this, I think Deb said earlier that we have to take a look at what the purpose is, and if the purpose is to, say, enhance debate, as she talked about, it would be very difficult for any Speaker or any of the people in the House to monitor what happens on your laptop. So we may lose that ability. If it was specifically to enhance debate, we wouldn't be able to do anything—for example, if somebody is surfing the net, we would not be able to police it, to say they are looking up something relative to the debate. If you do let it in, it makes it very, very difficult. So the purpose may be to enhance debate, but we wouldn't have the capabilities of policing, to make sure that in fact they are dealing with something in the debate and not simply contacting the constituents.

That's something you need to think of. Maybe the place to do that is in the House, that you do want to be doing work, because as you know, sometimes people are doing work or reading the paper. But if they do come in, we won't have the ability to say, "I'm sorry. You're contacting a constituent with e-mail. That's only to enhance debate in here, and you should be doing something"—we would lose that. I think the point you made is a very valid and very interesting one, one I hadn't thought of, quite frankly.

**The Chair:** Can I just ask for clarification on this point? We don't preclude notes and papers and so forth being handed in at any time, do we?

**Hon Mr Carr:** No, and as you know, you see in question period—and as I understand it, and the Clerk may have more, I think even at the federal House now they use PalmPilots to receive messages. As you know, the staff send them in question period. I believe they're doing that up at the federal House now.

**Mr DesRosiers:** I saw that recently. I was up in Ottawa and I saw that in operation. Some ministers use it; others don't. But Ottawa never had the system that we have here, never instituted the system of notes coming in from behind the Speaker's chair as we have here. In Ottawa, that never really existed. Ministers, once they were on the floor, were pretty well on their own and there was no way of sending in notes to them. There's no place in Ottawa for a bevy of ministers' assistants to be nearby; there's just no place on the floor for that in Ottawa. The closest they could be is in the lobby, and sending in notes really has not been a part of their way of being, but

recently I've observed that a few ministers had a PalmPilot during question period and were communicating with, I presume, assistants outside on various possible questions coming up.

**Ms Marilyn Churley (Toronto-Danforth):** I wanted to follow up on that. I hadn't realized they were doing that in the House of Commons. I'm aware that in certain standing committees I have personally received e-mail from members sitting on committees: "I'm sitting on a committee, just sending you this quick note," about such-and-such. That's the first time I became aware of that. I also didn't know that the House of Commons didn't have the access for staff to hand in notes, so I suppose that answers why they went ahead with this.

I'd be interested to know who made the decision. How was the decision made to allow that to happen? Because I would assume that it would be a fairly major issue for us, particularly, I would say at this point, for the opposition or anybody in opposition, the idea that cabinet ministers could be sitting there with their little PalmPilots and, although you figure it might take a while, you can come up with key words and codes and stuff to be getting instant answers to questions. The tradition is that sometimes they know the answer, sometimes they don't. We all know the cut and thrust of what goes on in there, and I think the way this was decided is of interest to us: an all-party equal committee, was it, or who made the decision?

**Mr DesRosiers:** I'm not too sure. We can easily find out for you. The way decisions like that are made in Ottawa is basically the same way decisions like that are made here. It would have been the procedure committee studying the thing and making recommendations to the House and the House adopting the recommendations, basically. Don't get me wrong here; there wasn't a proliferation of ministers using this on the floor. I saw two ministers using it. But think about the mechanics of it: the very nature of our question periods is a no-notice question period. So therefore there is no time, especially in the House of Commons, where the question period unfolds at a very rapid pace. There's just no time for a minister to say, "Just hold on a minute, I'll consult my assistant here," because they have basically 35 seconds on their feet to either ask the question or answer. So a PalmPilot I think is not really that much help. I did see, when they weren't being questioned, a minister communicating, but what he was saying to whom I have no idea.

**Ms Churley:** You're right that it's a rapid-pace question period there, which I'm sure you envy, Mr Speaker, and we in opposition, occasionally, when we're trying to get to our fourth question. But it's true that it would be hard to figure out how they would get in that rapid pace. Nonetheless, that opportunity is there.

The other question I have to ask is more generic. We're looking at the use of technology, but from your presentation, what would you say is lacking or problematic within our system that you think would require, or where it would be useful to have, technology? Leaving aside the members and whether or not I want to



be sitting in the House when I don't have anything on that day, but I'm on duty for the afternoon and evening, I've got some e-mails to catch up on and I've heard this debate a million times—anyway, I know exactly what Ted is going to say and what Margaret is going to say—I have to be there and it's attractive to think that I could get some work done. On the other hand, as Dwight pointed out, in theory we're there to debate and listen and respond to each other.

That whole question about how members use this technology: we have to discuss all of these issues. But for the workings of the House, are there any things that you think—and you too, Mr Speaker—would help facilitate your work or perhaps hinder it? Is there a real need for this at this time?

**Hon Mr Carr:** Maybe I'll jump in first.

**Interjection:** So I'll go second.

**Hon Mr Carr:** Just from my own personal standpoint, one of the things we do is that each day we take the bills and put them in the binders. There is that capability to look them up electronically. If you did have the laptop there, instead of filing them each day—and we run around and steal each other's bills when we don't have them and we get our fingers caught in the binders and so on—I think that using the laptop and being able to pull up and have the capability to look at bills electronically would be very helpful.

Having said that, there's a different degree in terms of members' ability. So that might be fine for some of the members who are used to them and use them. Other members would not want to have that. So, if we brought it in to use technology to make it easier, which I think it would, there may be a large percentage of members who still wouldn't want to do that—

**Ms Churley:** Even if it's a small number, you'd still have to provide that paper.

**Hon Mr Carr:** That's right—so it would be unfair. So we might be trying to do something to eliminate a lot of paper, and saving time and pages and so on would do it, but we might not really save any time because there might be whatever percentage—5%, 10%, 15%—who still need that and we couldn't say to them, "I'm sorry. If you want to do it, you've got to do the training." That's a difficulty I see, and I don't know at what point we'd ever have the capabilities to do that. It's a lot easier in terms of filing. As Deb will explain, we're doing that now: we can look up bills and we can look up the Hansard and so on. It's a great way to do it, but not everybody is up to the same speed.

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**Mr DesRosiers:** In direct answer to your question: not much. I don't think that technology today can bring a lot to a British-style process because, I agree, basically you're there to debate and to listen to the debate and to bring your own arguments. What the Speaker says is true. You could have a bank there that gives you access to the bills and so on, but I agree: how many members would really use that?

In other jurisdictions it's very, very useful, as Deb referred to earlier. In the States and in a lot of Continental jurisdictions, mainly a lot of the new democracies and so on, they've combined, for example, electronic voting and laptops and combined machines. Jurisdictions that work a lot in the chamber on amendments and on text and so on might vote 100 times a day on the different texts. So they combine a voting machine with a text machine, the text is projected on a wall and members will vote maybe 100 times a day on different wordings of text and so on. But that's not the British system. We don't do that.

There is one application. For example, if we had laptops at the table, Todd, Lisa and Deb could do the inputting of the journals and do a lot of communication. But if truth be known, if you ask Todd and Lisa, they do very well with that intercom as well, the combination of the intercom and television, talking with the folks who are working in the branch across the street. It produces the journals quite well and it produces the journals I think quickly for those people.

If you're looking for applications for members, I think we have to go back to what Debbie said earlier: you have to think of the two applications, the two very different workings of a member. When they're in the chamber to work on legislation, how much would technology help them there in that part of the job? Very little, is my humble opinion. If the other side of their job is working with constituents and so on, then if they want to bring that in the chamber, it could be of certain help.

**Ms Caroline Di Cocco (Sarnia-Lambton):** Just a couple of things, because some of them have already been spoken to. To me, it's looking at the purpose we have in the Legislature, as a chamber, what our purpose is in there, and the functionality. Sometimes I believe that the whole discussion, the evolving technology—it's almost like you want to fit whatever the purpose is and somehow say, "Well, we need a laptop because we can't function without it." I'm looking at the practicality aspect of it.

In the chamber we have the venue to debate, to discuss bills. Even when we're supposed to be sitting there, we're there in the evening, there's still a debate going on. I know we take work in there and so on and so forth. I think we would be losing that whole system, if you want, of what the Legislature is for. If the purpose is that we're going to try to connect to our offices, I mean completely link to them electronically, we're losing it.

It's the needs and the wants—to me this is one of those questions, the needs and the wants—and also, what isn't working now? How fast do we want Hansard on our laps? Is it speed? I heard someone say it would be more efficient, but in what way would it make it work better if we have the laptops? That's what I'm looking for. Sometimes I look at this and I try to see it objectively and I think, "The functionality, the purpose of the Legislature: is it being met without laptops on our desks? Is it being met without our needing to be sitting there trying to access whatever we need to access? Maybe somebody can give me an opinion."



**Ms Deller:** We don't give opinions.

**Ms Di Cocco:** Oh, sorry. I shouldn't say "opinion." A comment, then.

**Hon Mr Carr:** I'm so rarely asked these days.

I think you're right. We've gotten away in some respects from what's the debate, and the question I think you have to ask yourselves is, would it make it any worse? We all know that people are in there signing Christmas cards when they should be listening to the debate. We're also sitting more nights now, we're sitting longer, and that tends to now—any night you go in there people are talking; they're not listening and so on. Does this make it any worse? It probably would, but are we not meeting the objectives of being in there and listening to debate now anyway?

When I first came here, I remember that in the afternoon it would start out where all ministers, and even the Premier, would come in in the afternoon and debate. Sometimes that slipped off too. We have to take a look at what the whole issue of debate is and why that has slipped. Quite frankly, I think the reason it has slipped isn't because of the technologies there. Some would argue this could in fact make it a little bit worse and make it a lot easier for you to do other things. Sitting beside Ted I could never get any work done, because all we did was talk all the time. When I was first elected, I didn't even know the order of business in the House because a lot of times you get in there and you start chatting. I think the true intent and purpose of the House to listen to debate has often been lost for a number of reasons. The question you have to ask yourself: is this going to make it worse? Many would argue it would, I guess.

**Ms Churley:** Mr Speaker, do you listen to all the debate?

**Hon Mr Carr:** I certainly do now.

**Ms Di Cocco:** I guess in that context, the question that has to be asked is, how does having high-tech stuff on our desks assist in what the purpose of the Legislature is supposed to be? That to me is the question, not how can we fill our time, but how does having a laptop help us to fulfill the purpose for which we are in the Legislature? To me that's the key question.

**Hon Mr Carr:** Just very quickly, I also know one of the members, who will remain nameless, has some complaints, because originally there weren't really a lot of written speeches done either. Members would get up and they would know the bill and they would talk about it. I've heard some fantastic debates and stories of people who have gone in there and have done tremendous debates. They hadn't seen the bill and in two minutes they'd get up and talk like they're experts. That has also changed now, and you see people coming in with texts that are written and debate that has been publicly produced by somebody else. You don't even know if they read it the first time.

**The Chair:** Which is contrary to our standing orders, which don't allow us to read at length except for the purpose of quoting.

**Hon Mr Carr:** What I think has happened is people abuse notes and to some extent we've gotten a little bit away from that. The purpose and intent way back was that if you have to get in there and stand up without a note, you can't really fake it. We are all pretty good now as politicians, but anybody can come in and read. If you are standing up and speaking on your own, you really have to know something about the bill. We've drifted away from things like that.

Again, the question is, does this just enhance that? Theoretically, what could happen is that you could be in there and you could be reading on your laptop as you go along, and if somebody asks a question, you can change it. It can become electronic and literally somebody could be, as they say, pulling the strings from outside. Technology is such where it is a little bit more difficult to do that. The question to be asked is, is that a good thing or a bad thing for the institution? That's your challenge to decide then.

**The Chair:** Could I also ask in this discussion that you cover silent pagers and silent telephones—without using them in the House, but as a paging system—because we are focusing on laptops to this point.

**Mr Jerry J. Ouellette (Oshawa):** Essentially just flogging a dead horse in saying the same things as others are saying, that it is difficult enough now to get members to focus on the debate, let alone debating the topic that should be debated and focusing on what's supposed to be there, because there are so many other distractions that are currently taking place, whether it is corresponding with constituents or dealing with other issues that are about to come up or other areas. We are adding to that by putting this other option forward.

I would like to hear the questions come from individuals and the answers come from the individuals as well, as opposed to, OK, here's the question, there's the answer, and then the supplementary will be coming in. Wait. Supplementary. If they say this, you're now going to be saying that. No. We have to have the members stand on their own merit. It is very necessary to do that. Otherwise, why don't we just e-mail everybody the questions and answers and get that done?

What I'm hearing here is very similar, although I am understanding a bit of the Clerk's side on how it may assist them. In regard to that, I don't see where I have a problem with the system the way it works now. I get the information when I need it, as fast as I need it. They do a great job and they know their job very well. I don't see any problems there.

I do have one concern that Deborah didn't mention about the Internet site. We are hearing quite a bit about that, that they're attempting to change the name and that it could be called the "All Bradley, Galt and O'Toole Show All the Time." Is there any truth to that?

**Hon Mr Carr:** Even I won't comment on that one.

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**Ms Churley:** Madam Chair, you brought up the issue of silent pagers and telephones. That's something that I have mixed feelings about simply because, fortunately—



and it is happening slowly—we are getting more women in Parliament. I know of a particular woman who has young children out of town. There are times when she's in the House and she has her silent pager because there's something going on with the kids and she's nervous. I remember being in that position and not having any way at that time, if something happened with a kid in hospital, except having my staff, far away, run in and get me. I have mixed feelings about it, but I also understand. I don't think we should be conducting business on it, but there are times when, because we have this technology and because we have these silent things, if you are having some kind of family emergency there is a possibility to have a certain comfort there if you're on duty for hours. That's a consideration.

The other thing I'd like to say in this discussion is that we also don't want to sound like Luddites here. I'm unfortunately in many ways too caught up in technology. I'm one of those who has learned how to use it fairly effectively and have it all and carry it all with me. In a way, I don't like it. I'm always wired. Wherever I am, there's the PalmPilot, there's the pager, there's the cellphone, computers everywhere: in my home and in my office.

The reality is that it is the age we are living in, and as time goes on, it is going to be used more and more. At some point—and I'm not saying it should be now—technology is going to catch up even with the parliamentary system that we have now. What we are hearing here is that most of us, if not all, agree at this point that we don't want to move in that direction. I don't mean to be speaking for everybody, but I think that's what I'm hearing.

I still think, given that there is some information from other jurisdictions, albeit some are so different that there's no relevance, that we should be looking at it in terms of how it can best serve us. If there are ways that technology can serve us better in the House, we shouldn't dismiss it out of hand. I'm one who has mixed feelings about having a laptop in the House. I've got to admit that there are times—and I would support very strict rules around how it is used—when I would like to be able to have a laptop in the House to do certain things.

What is the difference? I bring in stuff to read: books, magazines, articles. I catch up on my reading from printed material. I write letters in longhand in the House. I do all that stuff anyway when I'm on duty and I've got to get it done. You have to question: what is the difference, since more and more of us are using laptops to conduct our work, if we are doing it in there anyway? There are issues around noise, the keyboards and all of that. I'm not suggesting that we recommend that we do it now. I think the day is going to come when we will, and we should be looking at other jurisdictions and the best kinds of rules to have around it. I don't want to just say, no, we are not interested, forget it, and let's not do any more work on it.

**Hon Mr Carr:** Just on the issue of the silent pagers, we haven't wanted to be intrusive in checking for them

as people are coming in, so what we do is, just occasionally, if somebody's out in the open playing with something, Wayne will do something. As you know, you can bring it in, because we don't check, and very discreetly—

**Ms Churley:** And you can't hear it.

**Hon Mr Carr:** And you can't hear it; it just vibrates.

**Ms Deller:** I'm just going to add to that and say that the issue with cellphones and pagers was an issue of intrusion on the debate and disruption. With vibrating pagers and cellphones, that becomes less of an issue. I think the Speaker and the other presiding officers have exercised some tolerance with allowing the silent pagers, or at least ignoring them whenever possible. The only thing is, if you do not switch them from "sound" to "vibrate" and they go off in the House, Wayne does take them from you. Just be forewarned.

I think you've all hit on the crux of the issue, which is something we were saying at the beginning, that maybe the starting point is to look at what the purpose is of the House and the role of the members therein, and that's what you first determine before you determine whether or not laptops and what they are used for. I think to a certain extent, Marilyn, you make a good point, that eventually it's probably coming down the road and what is necessary is to consider what are the guidelines around their use, and, ultimately, is the issue one of decorum or is it one of technology?

**The Chair:** I have four speakers. I just want to remind you that the purpose of today's meeting is to try to get as much information as we can from the Speaker, the Clerk and the Clerk Assistant and then go back to the caucuses and come back next Thursday with whatever the consensus is from your own caucuses. The clerk pro tem for our committee, Ms Freedman, has had her staff compile an excellent package of references. I know that our caucus members have each received a complete copy of that. When our caucus colleagues say, "What is used successfully or unsuccessfully in other jurisdictions?" don't forget we've got that tremendous tool that the clerk invested a lot of time in.

I'm going to try to get into a rotation here. So even though, Dwight, you had your hand up to speak, I'm going to Julia because she hasn't spoken.

**Mrs Julia Munro (York North):** Thank you, Madam Chair. I would just like to pick up on a couple of the comments that have already been made with regard to this issue. Marilyn referred to not wanting to be a Luddite, and I feel the same way. However, at the same time I'm reminded that even in our own motion, where it talks about the fact that we're looking at reforms that will improve democracy and enhance accountability—if I keep those two things in mind and then I look at this introduction of technology proposal, it seems to me that one of the dangers of this, other than those which have been suggested, and certainly the decorum, the question of the use of any of that technology, is, does it take away from the opportunity for debate? In the current system that we have, members have an opportunity, very often spontaneously, to do things like the two-minute hits. I



think that the more distraction you have—and yes, like Marilyn, I bring in my stack of stuff—the less the likelihood of your being part of that debate. That would be really defeating the primary purpose of our being here.

I recognize that the Chair's comments are that we are to use this opportunity to hear this and then have further discussion on it, but I think we have to use those ideas that have been laid out for us in the resolution as the key for the manner in which we do this.

On the issue of the silent pagers—and maybe, again, it's a bias that mothers share more than fathers—I see the opportunity for the blind eye, if you like, to the silent pagers because they shouldn't be a distraction. I think the current system is appropriate. If they aren't turned to being silent, then I certainly agree that we shouldn't have those distractions in the House. But I do think there is a role for them if they are silent.

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I think that speaks to the bigger issue in terms of coming back to, what are the ways that we can enhance our ability to take part? While we have the paper distractions and those commitments and people go out for telephone calls and things like that, I am reluctant to move too far in the direction of increasing further the kinds of distractions and ways by which we get left out of what is our primary objective, and that is to be involved in debate.

**Mr Duncan:** Like Marilyn, I'm wired all the time, but it has nothing to do with technology.

**Ms Churley:** We noticed.

**Mr Duncan:** First of all, I do listen to members in debate. There are times when I pick up a book or something, but I listen to some members because they are entertaining, and I mean this sincerely, on all sides of the House, and sometimes because that particular member in my view, regardless of political stripe, usually says something worth listening to. I learned something last night from Ted Chudleigh and Bill Murdoch about farms. Remember he was talking about maintenance of the farm and who's to look after the fence on the left-hand side?

My own view is that, given the history of Parliaments in the Commonwealth and given what theoretically we should do, although I, like everyone, acknowledge that that has perhaps gone by the wayside, I don't think we should go down the laptop route in the chamber. I feel very strongly about that. I would like to see us move to a position where perhaps we are respecting one another more and listening more to one another.

There are a couple of other technological issues that we may want to address too. Fewer and fewer cable services are carrying the legislative channel. I consider that to be very serious. I would think members of all parties—the government obviously would like the opportunity to use the parliamentary channel to get its message out, we'd like to get ours out and the third party would like to get their message out. That may be something we want to be concerned about.

One other little pet peeve I might see a use for some kind of technology for: I hate snapping my fingers at those kids. I just hate that.

**Ms Churley:** You don't have to do that.

**Mr Duncan:** I know you don't, but a lot of people do. I don't know if that's an ancient parliamentary right or whatever. If I had a little red thing I could hold up or a blue thing or an orange thing, whatever, or if I had a little button you could push like they have on planes—but I don't either. I try to go like this, but some days you hear that and these poor kids jump.

**The Chair:** It's Wayne who does it.

**Mr Duncan:** That's a little pet peeve of my own. You asked about things that technology might be able to help with. If I had a little button on my desk that could signal the need for a page, I might enjoy that.

I think we should be looking at ways of making the House a more deliberative body. When we get to our other discussion about the role of members in the House, we may want to look at reforms. We're going to put forward some ideas—for instance, joint sponsorship of bills between private members of both parties, those sorts of things—where the body could become more deliberative and encourage less grandstanding—I know none of us likes to talk about that—and more deliberation. There are some nights in there when there might be two or three members and the debate is interesting. I know the folks at Tim Hortons aren't going to be talking about it, but for those of us who have been given the responsibility of being here, I think it's very worthwhile. I say that with sincerity. There are members on all sides of the House whom I enjoy, some because they're entertaining and some because inevitably they lend real insight. I do believe that's the direction we should be moving in. I believe that technology and all the attendant glitz that goes with it may in fact hamper that, and I think we should be very cautious about this.

**The Chair:** I just want to confirm, Dwight, that the second part is the role of private members, period; it's not just limited to members in the House.

**Mr Ted Arnott (Waterloo-Wellington):** I've just taken receipt today of this BlackBerry, which is manufactured I think in my constituency, as a matter of fact. When this issue was last discussed by this committee, I think in 1996, these things were just a figment of somebody's imagination. This, to me, is totally different than a laptop. It's completely unobtrusive. I can sit down here and send and receive e-mails and it won't bother anybody. There's no sound associated with it. I'm learning to use it, so I don't know its full capacity, but I don't think it's conducive to sending and receiving long e-mails or messages from my staff who tell me what to say and I stand up and say it, although maybe that is a possibility in the future. I don't know.

But it is a very discreet piece of technology that I don't think would bother anybody. I have from time to time observed some members of the chamber privately using these new gizmos in a way that helps them do their job. Perhaps they're more productive; perhaps their staff can get in touch with them when there's an emergency that requires their immediate attention. And all of us as members have demands on our time that are consider-



able. There's time that's set aside for us in the chamber, and then we have committee duty that we have to attend to. Most of us have an office here at Queen's Park and one at home in our constituencies, and then we have constituency functions, so we are rather hard to get hold of when our staff need to get hold of us. So I think this is going to be something that I will use a great deal.

**The Chair:** If you have permission.

**Mr Arnott:** Right. If I have permission from my colleagues, I gather that this is technically illegal—that's not the right word, but technically I shouldn't be using this in the chamber right now, so I won't, for now. But I think there will come a time when most of us will be using this kind of technology, because in a way, to me, it's perfect for MPPs, maybe members of Parliament too. It's almost like it was designed with us in mind. All of us are busy people, and in trying to keep up with everything it's something that will be very helpful in terms of our productivity.

I was opposed to the use of laptop computers when it was discussed last time by this committee. I think I actually had an opportunity to play a fairly decisive role in defeating the motion that would have made a recommendation that we allow their use; is that not correct, Lisa? It was just a recommendation, was it not?

**The Chair:** It was 4-4, wasn't it?

**Mr Arnott:** Yes. It was a tie vote and I was chairing the committee, and I voted against allowing the use of laptop computers. I agree with you, Dwight. I think we want to maintain that chamber as a forum for debate, and to the extent that we can do that, we're doing the right thing. And decorum is important to me. I feel very strongly that we all need to comport ourselves in a way that would make our constituents proud of us. So we have to be cognizant of that at all times, but at the same time technology is coming and there are new technologies that I think all of us might find to be useful in the future.

**The Chair:** It's kind of humorous glancing up at the monitor. I hate to admit it but, having been here before we had television, and for any of us who were, I think it would be a fair comment to say that the decorum in the House did somewhat degenerate once we got into television, and the drama and theatre of it became far more exaggerated.

**Mr Duncan:** Sobriety increased.

**The Chair:** Well, true. That's what I'm told, in the evening sessions.

I don't have any other speakers on my list. Are there any more questions for our guests?

**Mr Duncan:** May I just respond for a moment, please?

**The Chair:** Yes, of course.

**Mr Duncan:** This may be a little more difficult for the third party, but the way we're able to spread our time in the House, I know the government has to maintain—we have an hour and a time when we have to be there. In terms of the technology you're using, I have one of those things. I rarely carry it around with me. I guess where

I'm coming from is that when we have that hour, in our case—and I know it's probably more difficult for the third party and likely for the government, just given the nature of the creature, but when we're there for an hour, I think our objective should be to find ways of focusing members' attention on that chamber for that hour or for that two hours whenever you're there.

Myself, I do use that thing in other circumstances to communicate not only with my constituency office but with my family and with others. But I would hope that in our deliberations here, not only as we're dealing with technology but with the role of backbench members in all of its potential, we try to find ways where we can focus attention on the issues and on one another, because you represent a group of people that I don't. When you speak, I am seeing 100,000 people from your county, or at least the majority of them, being represented, and it may be a diametrically different position than those that I represent. I think it's important that we try to find ways where we can bring greater focus to that, and I hope we can find some ways of, again, making this place a more deliberative body, number one, and one where when we do divide and we do have serious differences, we can express them.

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But one of the rule changes we agreed to in 1999 that I am very pleased about is the reference of bills to committee after first reading. That, to me, was a good decision, and I'll give the government credit. When the federal people introduced that, what they did was they took away second reading debate. This government left that in. The federal government—my colleagues, my cousins, whatever you want to call them—have sent some pretty controversial bills that way; for instance, the UI changes back in the early 1990s, where by sending it to committee you got rid of second reading debate. That hasn't happened here.

I think Brian's Law was probably the best example I have seen in my time here of where people of goodwill of different political stripes can work together. In my view, even though you may differ at the end of the day with it, it raises the tenor of debate and it raises all of us up. It makes us look like what I think all of us hope to achieve at some point, a body worthy of the respect of the people who sent us here.

**Ms Di Cocco:** Just in addition, for me the whole relevance of the chamber is what I certainly want to see us protect, and when things encroach on that, whether it be the decorum or whether it be technology etc—I really do believe that one of the good things about this committee is to be able to enhance that relevance, and Dwight eloquently put where we learned something in the chamber. I think maybe it's time; it's time we moved forward through this debate in discussing what the purpose and that relevance is and how we can make it a better place to conduct the business of this province.

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** I think what we're hearing here is somewhat of a consensus. I'm pleased that we've had our Speaker and

the Clerk and the Clerk Assistant, because their views are very valuable, and certainly if there's anything that could assist them in doing their job, I think they would have told us, in terms of technology. But certainly the comments about what you're there for in the House—you're there to debate and you're there to participate in the debate. And there are certainly avenues. If you want to leave the House, you've certainly got technology outside of it to use; it isn't too far away.

I think Ted's comments are fairly to the point. The type of technology you're talking about—the BlackBerry, the laptop, the silent pager, the cellphone—is all for the same purpose, which is to do business which is outside of the House, in essence, and not to assist you in the debate. If you could magically push a button and have a speech come on or get some good research to help you in the debate, I think we'd all be looking for that, if it could contribute to the debate.

But I think the point is, I could see laptops—I'm only speaking for myself personally, but I could see that type of technology really distracting away from the members' concentration on what's going on. When you need some help in terms of the debate, I think Julia can say that, especially with the two-minute hits in terms of trying to

get people to participate, it's tough if they're not focusing on the debate and what people are saying.

So I think this serves a useful purpose, and I think for Ted it's something that's being revisited in a sense, but I think the purpose of it has been served. So I'm pleased that we've had some discussion on it.

We'll report back next week. I can't say what we'll report back on, but we'll have some differing views.

**The Chair:** Thank you. I think this has been a very productive meeting, and I thank all members for their constructive comments. I particularly thank the Speaker, the Clerk and the Clerk Assistant for your being here and giving us information from your perspective, which is very important to all of us on all sides of the House.

So if there isn't any further business before the committee—

**Mr Duncan:** Could we not pose questions to the Speaker on a number of other items right now?

**The Chair:** We might all have questions.

Would someone like to move adjournment?

**Mr Arnott:** I move adjournment.

**Mr Duncan:** Support.

**The Chair:** Thank you. All in favour? Carried.

*The committee adjourned at 1655.*











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### STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

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## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 8 November 2001

# Journal des débats (Hansard)

Jeudi 8 novembre 2001

## Standing committee on the Legislative Assembly

Use of technology

## Comité permanent de l'Assemblée législative

Utilisation de la technologie

Chair: Margaret Marland  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLY

Thursday 8 November 2001

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Jeudi 8 novembre 2001

*The committee met at 1603 in committee room 1.*

## USE OF TECHNOLOGY

**The Chair (Mrs Margaret Marland):** Good afternoon. I'd like to call this meeting of the Legislative Assembly committee to order. Seeing that we have a quorum, we can start. We need to discuss the matter of the use of technology in the House as a follow-up to our last meeting with the Speaker and the Clerk and the Clerk Assistant.

**Ms Marilyn Churley (Toronto-Danforth):** It appeared as though there was almost a consensus at the last meeting—and I say almost—toward not doing anything on technology. I expressed at the very end of the meeting that I had some concerns that I didn't want us to be complete Luddites here and that I would entertain the possibility of a pilot project with laptops in the House.

They're being used in a lot of other jurisdictions, and just to prove that the NDP caucus is forward-thinking, in discussion the majority of our caucus were in favour of trying a pilot project of being allowed to use laptops in the House, with certain rules attached which we of course would discuss here. So I want it on the record that my caucus—and I'm representing them—were somewhat dismayed to hear that the committee wanted to dismiss going forward with any use of technology in the House. I don't think I have the support here for that, but I just want to put it on the record.

Second, I'd like to say that should we decide that the members will not move forward on using any technology in the House, I would like not to include the clerks in that decision. I firmly believe, in my reading of the material, of which there was a lot—looking through it and from the discussions here and from what I understand the clerks do, it might be to their benefit to have some kind of pilot project using laptops in certain areas.

Should we decide that the members not use technology, I would like to separate members' use, because there is a whole set of different issues, questions and concerns about that, some of which were brought up by all of us at the last meeting. But I believe the usage of, say, laptops by the clerks in certain circumstances may indeed help them do their job. I would propose—and I may make a motion on this later—if the clerks are interested in bringing forward a proposal on the usage of technology, be it laptops or something else, that they

come forward with a proposal for a pilot project. I'd like to hear what others have to say, and I can make a motion further to that discussion.

**The Chair:** Today I'm going to go in the traditional order, because last week I was bouncing all over the place. So if either of you wishes to speak—if not, I'll carry on for now. Ms Munro?

**Mrs Julia Munro (York North):** Thank you, Madam Chair. The people I spoke to were not in favour of laptops. I think there was some sense, perhaps, of things like pagers that don't make noises. There's sort of a distinction between technologies that would allow people to do other work at the same time, such as a laptop, and tools like a pager, which wouldn't interfere in the current situation of the responsibility of a member in the House.

In our conversations up to this point, I think we've tended to lump technologies together, and I would suggest to you that there seem to be some who differentiate between things like laptops and things like the pagers. As I say, the people I spoke to did not support the idea of laptops. They did, however, think that being able to have a silent pager was probably something that didn't interfere with the normal work of the House.

**The Chair:** Dwight?

**Mr Dwight Duncan (Windsor-St Clair):** We had already spoken in our caucus—

*Interjection.*

**The Chair:** Pardon?

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** We want to know which order. Are we going to speak person to person, or are we going party to party? I don't know. I was going to say something, but if we're going in a different order I don't care.

**Mr Duncan:** Let him go.

**The Chair:** All right. Go ahead. It's not timed, so—

**Mr Tascona:** OK. In the sense of dealing with this issue, there was minimal support to use some technology, be it a laptop or a silent pager, but there wasn't any majority view in terms of going in that direction. Personally, I'm not in favour of technology in the House or committees, but I'm open to discuss this. That wasn't my sense of what I was receiving.

**Mr Jerry J. Ouellette (Oshawa):** I think I expressed myself quite clearly last time that I was very much opposed to the use of technology in the Legislature. It's a place of debate. As I specifically said last time, it's difficult enough for people to focus on the conversations we



are supposed to be dealing with, as opposed to outside distractions, whether it's answering letters or e-mails or staffing and things like that. Another distraction like that for the members would take away that much more from the House. So I'm very much opposed to the use of technology in the Legislature. As mentioned in the past, some things about use in committee and helping out some of the clerks—I think committees are a separate issue, and we should deal with it as such.

1610

**The Chair:** Jerry, you weren't here when Marilyn mentioned the clerks' use of laptops. You meant in the House and in committee, did you? I just want to clarify that.

**Ms Churley:** I said we should keep technology usage by the clerks—not just laptops—separate from usage by the members. Should they have a proposal, whether it be laptops—I expect that's the most likely—or other usage of technology that they think would benefit their jobs to serve us better, then I think they should be able to come forward with such a proposal, but that we keep it separate.

**The Chair:** Just to clarify your comments, Joe, are they pertaining to laptops? Do you support silent pagers, as Julia does?

**Mr Tascona:** No, no technology.

**Mr Ouellette:** No technology.

**Ms Caroline Di Cocco (Sarnia-Lambton):** I personally feel that technology, unless it's going to enhance the role or purpose of the Legislature, and I don't think it does—I believe we end up getting as immediate access as we need to get notes back and forth. We have pages, people who do this work. To have technology for the sake of having technology, because it is now what we must do, for some reason, otherwise we can't function, I don't think is a good enough reason.

There is a purpose to the Legislature. In the time I've been here, we've functioned very well. I don't know how much more immediately we need information to be called out. I'm certainly of the view that more technology in the Legislature doesn't assist us in the role and work of the Legislature.

**Mr Duncan:** We had caucused the issue of laptops prior to the last meeting, and it's overwhelmingly opposed in our caucus. Frankly, we did not put it in the context of committee, but I suspect the view would be the same.

In respect to silent pagers, we have not specifically caucused on that notion. I suspect our members, on balance, would support the use of them, since I know there are a number who are already doing that. But I would put a caveat on that. I don't believe we would support any device that allows two-way communication, for instance—what do they call that thing, a BlackBerry or BlueBerry or something?

**Mr Tascona:** A raspberry.

**Mr Duncan:** I don't think there would be support for that. However, I think a silent, vibrating mechanism on a

pager or cell phone would probably be acceptable to our people.

I think we said last week—I don't recall precisely, but Hansard will reflect it—that the table already has certain technology at its disposal that members don't and ought not to have. I would suggest that we'd certainly be prepared to look at the use of technology by the table—and by the Hansard officers, I might add; I even noted today that one woman was scribbling things down very quickly.

**Ms Churley:** I think we're reaching a consensus on technology by the clerks and Hansard.

Coming back to laptops, having read through some of the material, which I hadn't before the last meeting, and having talked to a few Toronto city councillors, who, as you know, have some form of screen—it's not a laptop. I'm not sure how it functions. It's wired. They certainly are in no position to communicate outside, but they have monitors. For instance, a motion that comes forward, resolutions, voting—although I think they do electronic voting, which I would not support in this context.

I'm thinking more about technology that would enhance our role in the Legislature, as opposed to technology that keeps us in constant communication with the outside world when we're there. I find myself rifling through paper Hansards when I'm looking for something, and I'm trying to find bills to refer to something. I would be quite interested in some kind of pilot project where we have access. I don't know the name, if anybody can help me; I forget, and I didn't bring my notes. It's not a laptop where you can communicate with the outside world. It's technology that can call up bills that you're dealing with. What are some other examples? Somebody help me out here. I think you get my drift.

**Mr Duncan:** Briefing notes?

**Ms Churley:** No, it would be internal. You couldn't bring in—

**Mr Duncan:** Briefing notes are internal. The government has their set of notes; we have ours.

**The Chair:** Marilyn, I think you're talking about legislative documents.

**Ms Churley:** Yes, I'm talking about internal Legislative Assembly documents. That would be an interesting pilot project. All our Hansards, which are in big piles under our desk, and bills that we're frequently rifling through—Legislative Assembly bills in order, which we now get in paper form. I think it would be very useful to have that kind of technology in the House. I would see that as enhancing our role and enhancing our ability to be efficient in the House.

I am not in support of a pilot project of a laptop where you can be sitting there sending e-mails back and forth to your staff, your family and friends, or in fact being able to surf the Net, anything like that, but some kind of system that would just be able to call up internal Legislative Assembly documents.

As I understand from other jurisdictions, that's being used quite successfully and has not, as far as I can see—and Lisa would know more than I do, because she's



studied it far more. It's been quite successful and really seems to have enhanced the role of the members in the Legislatures.

**The Chair:** Maybe we could just see, Lisa, if you can recall some examples.

**Clerk pro tem (Ms Lisa Freedman):** I think in one of the documents there is a chart that lists what the members have access to, particularly in American jurisdictions. It can be set up any way the members want. It could be set up simply to have House Hansard, committee Hansard, bills, votes and proceedings, order papers, and that's it. Members would have access to that day's order paper, to go back in the votes, to search Hansard, to bring up a bill. I was just talking to our resource from LIS. It could be nothing more fancy than simply a monitor on your desk—

**Ms Churley:** A monitor. That's the word I was trying to—

**Clerk pro tem:** —and a keyboard so you could do Hansard searches. But you wouldn't have access to—there is nothing to write, no word processing, no e-mail, nothing else. Anything is a possibility. It's totally up to the members.

In a lot of jurisdictions they have specifically decided not to have e-mail, not to have Internet access, but simply to have—what you're really saying is the House documents, the documents that are in all those binders under your desk every day, accessed electronically. Anything is a possibility.

**Mr Duncan:** Did the Clerk and Speaker not indicate last week that would involve very considerable cost? I recall that discussion came up, and they said there would be significant cost establishing a system like that.

**Clerk pro tem:** I'll flip it over. I think the main costs I had spoken to the Speaker and the Clerk about beforehand would be the actual cost of a laptop being provided to 103 members, which is a significant cost.

**Mr Duncan:** Plus the wiring to go into the House.

**Clerk pro tem:** As I said, anything is possible. There is, of course, a cost involved.

**Mr Duncan:** In many of those jurisdictions where that is allowed—for instance, I know in the statehouse in Michigan—that's their desk, that's where those folks work. We have all those things available to us in our offices, correct? And again, the tradition of the House is to—I suppose if you were just limiting it to internal documents with no way to have influence from the outside, but—

**The Chair:** I think if you, as a committee, want to discuss that aspect, we need to have more information—I'm coming back to you, Jerry, because I know you want to speak.

I don't think we can talk to the point about cost without knowing what it is. There's sure an enormity of cost in all the trees and paper and stuff that's printed. There certainly would be a one-time cost for wiring to install a system. But I think we need to know whether it would be less cost in the long run because we're not doing the printing and distribution of all that paper.

1620

**Mr Duncan:** You're assuming they'd get rid of the printing on paper. The experience in most other automation projects has been quite the opposite. I remember, 20 or 30 years ago, everybody was saying we were going to have a paperless society. What has come about is that we have more paper, because now we have hard copies.

By the way, I have a number of members who insist on having hard copies. I know I would, because I sometimes don't have access to a computer, let's say, when I'm on a train or flying back here and I want to read to a bill or something like that. I don't think for a minute that this would eliminate paper. I don't think we should confuse that. I think we would probably want to have hard copies of all that as well, as we do in so many other things.

**Ms Di Cocco:** It's—

**The Chair:** Just a second, Caroline. In fairness, I'm going to go back to Jerry.

**Mr Ouellette:** First of all, back to one of the comments in regard to other jurisdictions, I don't think they have the competent staff that we have, who are able to provide us with all the information on the system that they do. It works very well. I know the library—the research there—is open all the time when the House is sitting. We can automatically access information there, and the desks have been very efficient in their job. I don't know that we're going to see an increase there. Maybe we will, and maybe we won't.

The other thing I would say to the official opposition members—mind you, it depends on how you take it, whether you're a whip or a House leader. Immediate access and getting in touch with your members all the time is sometimes desired by members and sometimes is not, and sometimes it's desired by whips and sometimes it's not.

**The Chair:** You could say that—you don't have to make this a partisan committee suddenly.

**Mr Ouellette:** Oh, no. He could discuss it with his caucus.

**The Chair:** You could say that to your own whip and your own House leader.

**Mr Frank Klees (Oak Ridges):** Would you mind if I just ask a question?

**The Chair:** No, we would like you to.

**Mr Klees:** You've probably gone through this, but I'm interested in the objection to having access to outside information or being able to do e-mail on this monitor that you prefer.

**Ms Churley:** We've been through all this, you're right.

**Mr Klees:** I missed it. I'll read Hansard.

**Mr Duncan:** I'll give you the Coles Notes version. The history of the House is that members should be in there unfettered. That's why, among other reasons, we have a bar, a Sergeant-at-Arms.

The federal House doesn't even have the ability for staff to send in notes to members or ministers. If somebody is on the floor of the House, getting notes while



they're debating—like that Nortel commercial where the guy is giving his speech and it's actually somebody outside reading it.

From a theoretical perspective, that's been the parliamentary tradition which, last week, both the Clerk and the Speaker reaffirmed as being a positive tradition that continues to be reflected. The Clerk did note that a couple of federal ministers are now using BlackBerrys. We'd have very strong objections to that. Theoretically, a minister could have just a little computer screen and somebody in the other room reading him the answer.

By the way, the same thing could happen with us. We could have the Sierra Legal Defence Fund or whatever on-line as the minister is responding to our questions. The thought was—and if I'm not reflecting it accurately, correct me—that it could interfere with the proceedings of the House, it could influence the proceedings of the House, and the tradition of British Parliament, or Parliaments of the nature we have, is such that the members should be there free of influence. The irony was pointed out that today, for instance, any one of us can get notes sent in. That was the view at the time last week.

**The Chair:** Can I just ask you to clarify one other thing? You said that if that were to happen—I know we did talk about this last week, and I think we do have to go back to Frank, because he asked that for information. Maybe he has a question following; I don't know.

One of the aspects of people on the floor using a BlackBerry, a screen or whatever, is that they are puppets. But I also thought there was some reference last week that you are still the person who is delivering the spoken word. So whether the answer comes in a note or on a BlackBerry, you are still responsible for what you say in the House. You could say the people who send in notes are pulling the strings of ministers. The Sierra Legal Defence Fund or whatever lobby group is giving information can now send in notes too. So it's not exclusively a government thing. It's not just ministers who get information.

**Mr Duncan:** Absolutely, but—

**The Chair:** Just in summary to Frank, I think we did refer to that. It doesn't matter where the information comes from, or in fact how it comes, it's still up to the person who has the floor, is recognized by the Speaker and is going on record in Hansard.

**Mr Duncan:** But there is a reason why we can't even call witnesses to the House, why people in the galleries cannot applaud. They're not members. It's tradition, and it may be a tradition this Parliament wants to do away with. Our caucus would not support that. If you start doing that, then at what point do we start having delegations appear before us? At what point do spectators get to applaud? That's been the whole basis of our tradition.

The other point I did neglect to note, which I think a number of us concurred in, was not even so much about outside communication but the whole notion that there's not enough attention being paid by members in the House as it is now and this would potentially be a further distraction.

**Ms Churley:** Can I interject just for a second? I don't know how others feel, but I'm not interested in having an absolute repeat today of our entire debate last week. I regret that you weren't here, but I don't want to have that whole debate. We'll be here for hours. I'm sure the same questions were asked around television. It would be interesting to go back and look at that.

I would say, Frank, that we've already come to a certain agreement around having technology used in that way. To have that debate again would take some time. But just to let you know where we are now in the committee, we were discussing today the possibility of monitors, and I think there was a little bit more interest in possibly looking at allowing the clerks at least to use technology.

**Mr Klees:** Ten minutes ago I did say I'd be happy to read Hansard and not take any more time of this committee. I agree. I don't want to debate it.

**The Chair:** I should say that Frank is subbing for Julia, who had to leave.

**Ms Churley:** And welcome.

**Mr Klees:** Thank you.

**The Chair:** Marilyn Mushinski is down to sub for Ted Arnott, just to explain what's going on. Caroline?

**Ms Di Cocco:** Just on the whole aspect of the purpose of the Legislature, I think keeping that at the forefront of this discussion is what is required. At the beginning of the day, we get a list of what's going to be happening in the House, the bills are there. One of my other concerns about even having monitors that just scroll up the bills or Hansard is that the glitches that happen in this technology that would totally impede us could happen a lot more often. I know it seems a bit archaic going through the actual hard copy, but it doesn't matter. You're not going to get a technological glitch happening where everything shuts down and everybody's stranded. You become so dependent on it.

1630

Again, I don't think it's going to save paper, going back to that issue. I've found that, for some reason, the actual paper grows exponentially with the technology. I don't know why, but that's the way it happens. Again, just to reiterate the position, I think that if we encumber the Legislature with unnecessary technology, to be able to listen and to debate bills, it could become more of a distraction than a tool that would assist in the purpose of the Legislature. I really believe that profoundly, and in the discussions we've had in our caucus, people who actually believe in those ideals, if you want to call them that, believe technology is not going to enhance that purpose. That's what I wanted to say.

**Mr Duncan:** I just want to make a comment.

**The Chair:** Marilyn first, and then you.

**Ms Churley:** I was going to make a motion, so perhaps he could go ahead.

**The Chair:** Go ahead, Dwight.

**Mr Duncan:** I did want to address the television thing. I know you were here as member, Margaret, and I was here as a staffer. Just to remind folks, it was almost



40 years after television became available in mass markets that the House adopted it and—

**The Chair:** I thought he was going to say it was 40 years ago.

**Mr Duncan:** It feels like it some days, Margaret. But there had emerged a consensus that it would enhance, and there is still a debate on about that. We had a little exchange about that, and Margaret quite rightly pointed out that there's a lot more strutting and I said there's a lot more sobriety. So it's been positive and negative. One only need attend night sittings.

**Ms Churley:** I think that Frank may have been more on my side with this. Clearly from the discussions last time and this time, I would like to see us try a pilot project with monitors. Recognizing that there are fiscal issues, and with revenues going down in the province right now, I would like to leave the door open at another date; I'm pretty clear that it's not going to happen now through this committee.

I would like to move that the clerks and Hansard, if they so choose, come forward to this committee with a project proposal for a pilot project to use technology in the Legislature to help them serve the members.

**The Chair:** Would you include researchers or anyone else who is an adjunct to the work done at this desk, in terms of committees?

**Ms Churley:** Absolutely.

**Mr Duncan:** I think they've been using them all along, haven't they?

**The Chair:** They have.

**Mr Duncan:** Yes, that's what I say.

**The Chair:** They don't all use them, but some use them, and I think we should get that point clarified.

**Ms Churley:** It would be researchers and clerks of committees as well. OK.

**Mr Duncan:** I agree.

**Mr Ouellette:** A modification on that. Just in case there's some further discussion on that, could we see if there's a separation between committee and Legislature when that's reviewed as well? Some may be opposed to use in the Legislature when they may be supportive of it in committee.

**Ms Churley:** You mean members?

**Mr Ouellette:** Yes.

**Ms Churley:** OK. I'd support that.

**The Chair:** Well, wait a second.

**Mr Ouellette:** When the proposal comes forward—because she asked for a proposal from the clerk's office to do the research—to make sure it's not for both, that there's an option available that committees and the Legislature could be separated if need be.

**The Chair:** Are you going to allow silent pagers?

**Ms Churley:** I already use one from time to time. It's silent. Nobody knows. Yes, I think we're all in support of that, aren't we?

**Mr Ouellette:** No.

**Ms Churley:** OK. Well, we'll have to have a vote. Does somebody want to make a motion on silent pagers?

**Mr Duncan:** Hello?

**Ms Churley:** You're not allowed to talk in front of them.

**The Chair:** Is there any discussion on the first motion?

**Ms Churley:** Do you want to read it back to us? Speaking off the top of my head, I don't think my wording was all that coherent.

**The Chair:** I can't hear.

**Ms Churley:** I'm leaning way back, that's why.

**The Chair:** No, it's OK, it's the—

**Ms Marilyn Mushinski (Scarborough Centre):** It's just that he keeps putting this Marilyn's mike on, that's why.

**The Chair:** It's the traffic noise too, with the window open, which we need.

**Ms Mushinski:** It's just confusing to have two Marilyns.

**Ms Churley:** Yes. Even more so since I've gone blond.

**Clerk pro tem:** It would read something along the lines that legislative staff be allowed, be welcome, to come forward to this committee with a pilot project for the use of technology to help them serve the members in the committee and in the House.

**Ms Mushinski:** Or just that legislative staff bring forward a report.

**Mr Klees:** So this motion does not limit the technology to just a monitor.

**Ms Churley:** No, because the members are now out of the equation. It's for clerks, researchers and Hansard.

**Mr Klees:** That's all?

**Ms Churley:** Yes, because the support isn't here. People have gone back to their caucuses. You could make a motion if you wanted and have it voted on. In the interests of consensus here, I didn't make one on that, but there's no reason why you couldn't if you feel strongly about it. I'd support you.

**Mr Klees:** I'm sorry I wasn't here. I should have had myself subbed on to this committee a long time ago, I guess, because I am extremely interested in this, particularly from the standpoint of making a member's life a lot more efficient in today's world. I'll read Hansard, and I won't take a lot more time of this committee. But I'm extremely disappointed that we would have had this discussion, and if we're going to do a study or a pilot project or ask for recommendations, that the members' lives in here won't be included in that research.

Frankly, I didn't hear—perhaps I missed it—about members of this committee coming back for a full debate. I know we had some documentation delivered to us with some questions on it, but I don't recall the full debate from our caucus. That, in turn, would have been reflected here at the table. If I missed it, then that's my problem, and perhaps it's because I didn't have much help from technology to help me actually deliberate on this properly. I would prefer that you make that motion not to exclude members, because there may be some aspect of technology that would in fact benefit others. If



we're going to go through the process now, why not include that?

**Ms Churley:** If I may, what I'd like to do, if it's OK with the members, is vote on my motion, which clearly distinguishes, because there are different feelings on the matter. I think everybody's in support of my motion. We should vote on that, and we deal with the members' access in a different motion.

**The Chair:** Joe, do you wish to speak?

**Mr Tascona:** Yes. From our party's perspective, certainly information and detailed research that was provided by the legislative clerk was presented at caucus, and information for members to indicate their interest was requested. There wasn't an overwhelming response. But of the ones that were provided, which were very minimal of the caucus, there wasn't really a strong sense of going that route. If Frank wants, I'm fully prepared to give him what I've got. I just got some today; there weren't too many, I can tell you. That's all I can say in terms of there being a full opportunity for that information to be shared. It was shared, and an opportunity for response.

**The Chair:** OK. Then we'll take the vote on the motion that's on the floor. All in favour of Ms Churley's motion? Against, if any? That motion is carried.

**Ms Churley:** Can I ask a question? The matter of having technology in the lobbies: there's no rule for or against that, is there? Suppose a caucus wanted—I assume we'd have to pay for it out of our caucus budgets—to have a laptop or a computer in our lobby. Could we do that out of our budgets? Is that already a possibility?

**Clerk pro tem:** The information I can provide is that there are drops in the lobbies that can be hooked up to computers and from time to time—I don't want to say what goes on in one lobby or the other—there have been computers in the lobbies. I would probably say, before I check, that the caucus would provide its own computer, but there are drops in the lobbies.

1640

**Ms Churley:** And so we wouldn't need any permission. Is there any process? It has already been done, so should we choose to, we could do that without any kind of motion or—

**Clerk pro tem:** I don't want to give you a definitive yes, but from my understanding I don't believe there's a problem, and I can get back to you immediately if I find out there is.

**Mr Duncan:** I can watch your computer for you.

**Ms Churley:** I'll pay you to do it. No secrets there.

**The Chair:** Because I've been asked, we need to deal with silent pagers—at the moment, whether or not people are using them, they're still illegal—in order to protect everyone who is using them and may want to use them in the future, if we're making a blanket decision on technology, and we haven't even made a blanket decision on electronic voting. We focused on these hand tools so far in our discussion. I guess we can assume we don't want to get into any other technology, but we haven't named

any other technology and I do feel that, as far as the pagers, because they are being used, we should legitimize them once and for all, as long as they're silent. Marilyn?

**Ms Churley:** I'd be happy to make a motion that we allow silent pagers in the Legislature. Speaking to that motion, I make it on the basis of the fact that people are using them. Since we have not nearly enough but more women with children in the Legislature—that's not to say that men don't have a concern too—women need pagers in the House to keep track of their kids back home more and more, and we're doing that.

I try not to use one for work-related purposes, but there are times, of course, when you've got it and you do, but it gives a certain comfort when you're leaving your family behind, for them to know and for you to know that they can contact you immediately if there is some kind of problem.

**The Chair:** One of the arguments I promised I would relay for the record, because that point had been brought up, is that a lot of rural members don't have staff down here who can run notes in to them. Some of them don't have an office with a staff person, so they have some preclusions on how they're able to function without a pager.

**Ms Churley:** They function without staff?

**The Chair:** No, they have the staff, but they're not here all the time. Dwight?

**Mr Duncan:** I personally don't have an objection to a silent pager in the House, but as I indicated earlier, this is one question that I did not caucus and I'd like the opportunity to do that.

I do know that several of our members have them and have them on in the House, but again, to be candid, I did not raise this specific issue. I'd like the opportunity to do that, and then I can give a more informed opinion. We've dealt with the laptops and we've dealt with the difference between the table and members, but this is one question we didn't specifically deal with. I don't personally object, but I'd like to get some direction from my caucus before I commit ourselves to a position.

**The Chair:** Marilyn?

**Ms Mushinski:** We have to be careful on this issue. I can recall a member on our side of the House had a silent vibrator in his desk—

**Mr Ouellette:** No, no, we're talking about pagers.

**Ms Mushinski:** —and it went off.

I just wanted to liven up the discussion here this afternoon a little bit.

It was a pager that was also a vibrator, and he had it right in his desk next to the mike. You wouldn't hear it normally, but because it did vibrate it made this very funny buzzing sound and even though it was a silent pager, he did have it confiscated. It did disrupt the proceedings a little bit. So I think we should be quite clear in our language when we speak about pagers and other technologies.

**The Chair:** Like non-intrusive.

**Mr Duncan:** I wouldn't support—what are they, BlackBerry's, BlueBerry's?



**Ms Mushinski:** You wouldn't support non-intrusive vibrators?

**Mr Duncan:** I wouldn't support the use of those things you can send e-mails with, you know. They're not laptops. What do they call them? BlackBerrys?

**Ms Mushinski:** Right, I've seen the little BlackBerrys. But do they make a noise?

*Interjections.*

**Ms Mushinski:** They don't. I thought BlackBerrys made a noise.

**Mr Klees:** They do.

**Mr Duncan:** Yes, but my concern with them is, again, the two-way communication.

**Ms Mushinski:** I've opened up a can of worms. I apologize for that, Madam Chair, but we did need to add a little levity to this discussion, which was getting a little dull.

**The Chair:** Just for your information, BlackBerrys are the same as pagers. You can put them on an audio or a silent mode.

**Mr Duncan:** Yes, but you can also send e-mails with them.

**Ms Di Cocco:** They have a tremendous amount of—

**Mr Duncan:** Capability.

**Ms Di Cocco:** Yes.

**The Chair:** Joe, you put your hand up.

**Mr Tascona:** I haven't canvassed silent vibrators with the caucus, so I'm not going to be able to comment on that. I'm open to do that. I'll say this: if we're focusing on the silent pager, I didn't get a sense from the caucus of any great interest in that either, but it's for the members of this committee to discuss.

**The Chair:** Well, shall I assume—Marilyn?

**Ms Churley:** I'd be happy to withdraw my motion. That makes sense. And I haven't canvassed that specifically, although I think my caucus would be in favour of it.

Marilyn Mushinski raised the issue of exactly what we're talking about: a silent pager. It seems to me we need to make that distinction. It's important, because Dwight brought up the issue of the BlackBerry, and its capabilities go far beyond being a pager. We need to distinguish between that and a silent pager. I'm not sure any more exactly how we're defining a silent pager, then.

**The Chair:** We're intelligent enough that I think when you come back from discussing it with your caucuses, if you choose to make a motion it should be emphasized with an adjective, "non-intrusive" or, you know, "silent"—

**Ms Churley:** But if I may, the point that Mr Duncan brought up—I wonder if we could have an answer to that question from our expert here. What would you say is a silent pager that could be used in the House that cannot communicate with the outside world, cannot accept or receive e-mails, basically is just a pager?

**The Chair:** I would say to the government members, we would like to introduce this gentleman to you as to who he is and why he's more than capable to answer this question.

**Mr Andrew Kleiman:** My name is Andrew Kleiman. I'm from LIS. We support all the members' computer equipment throughout Queen's Park and the constituency offices.

There are two types of pagers. There's a one-way pager and a two-way pager. A one-way pager is just a simple pager. You get a numeric message or it will just beep saying you've got a message. A two-way pager would be like the BlackBerry device that you can respond back to a question or to an e-mail, or it can actually have a pager number. So there are two types of pagers and they're both silent.

**Mr Duncan:** Just on that, Margaret, that's why I specifically talked about a device's ability to communicate two ways. For instance, my cell phone, as I'm sure most of yours do, has a vibrate function on it where you can, instead of a ring—I mean, we all use them; we're out in public. We do need to be very careful about how we define. I'd have no objection to a device that signals that you're needed in your office or that flashes a phone number to call or something like that. But, again, I think we have to be very careful about our definition.

**The Chair:** OK. Marilyn, you had your hand up. Do you want to say something?

**Ms Mushinski:** I was going to say that's exactly where I got the word "vibrator" from, Madam Chair.

**The Chair:** All right. Let's agree then that you're going to go back and take a consensus of your caucuses. After you've done the consensus on that matter, is the committee satisfied that that's as far as you want to go in discussing any other technology, whether it's electronic voting or anything else? There's a whole realm of subjects that can be brought before the committee, and I think we need to decide whether we want to go further on something we haven't discussed or not.

1650

**Mr Duncan:** There is one issue. I know members kind of nodded in agreement when I raised this toward the end of the meeting last week. There is a notion that more and more cable services in the province are not carrying the legislative channel. That is of some concern. I know the Thunder Bay area can no longer get it, certainly not in real time—that's more of a computer term—as it's happening. I've heard from others that this is an issue. I wonder if, as part of our deliberations, we could ask for a report on the various areas of the province—I guess it depends on the cable provider—and if it might not be appropriate for this committee, on behalf of the Legislature, to recommend to the Speaker or directly go to the cable providers to see about the amount of coverage the Legislature gets.

The other issue that members of our caucus have raised—and again there's no consensus on this, but I will put it on the table—is that that station sits idle whenever the House doesn't sit, save and except committee. There might be alternative uses for it. Again, I'm thinking out loud and I don't want to take too much of the committee's time, but those issues have been raised with us.

**The Chair:** The expert in that area is Bill Somerville. You could either invite him to come to the committee or



ask him, in a preliminary way, to give us a report on the status quo as to what's been happening with the depletion in the number of cable companies carrying the channel.

**Ms Mushinski:** Just one point: my sense is that they're in violation of their CRTC agreement. It's my understanding that through licensing there are requirements to put on some kind of community channel that broadcasts, if not a local council meeting, then at least have the parliamentary channel. I would like that to be investigated as a part of any inquiry into why cable television is actually reducing political programming as opposed to increasing it. I think it's very detrimental to the community to be denied that kind of information.

**Mr Duncan:** Just one other point on that: for instance, in the Toronto market, it's not just the live coverage. If you want to see a repeat of question period on a week-night, in Toronto you can get it in French on TFO, but you can't get it in English.

**Ms Mushinski:** You can get it in French but you can't get it on TVO.

**Mr Duncan:** We've got this equipment, we've got this technology, the broadcast ability. I assume there would be costs associated with satellite time and so on. Maybe we can make better use of it and have better reach, but I do believe that's something we should look at.

**Ms Mushinski:** I am getting complaints from constituents since Rogers took over the Shaw programs. Shaw actually broadcasts a lot more political programming than Rogers. When we look at that, we should look at the disparities between the cable companies as well, I believe.

**The Chair:** Let's get the report from Mr Somerville, and then that will give us the ammunition as to how to make the next step to the cable companies themselves.

**Mr Klees:** Could we ask that the report be specific to the cable companies that have either cut back or are not carrying that? Also, it may be that they carry it, but they're carrying it at 2 o'clock in the morning. That is just as good as not carrying it. We should have a specific report as to who is, who is not, and when they are.

**The Chair:** If someone else, Lisa, could give us, in addition to that information that Mr Klees has requested, the clarification about what the licensing requirements are from the CRTC.

Do you want to end the meeting at this point in terms of technology? I'm anxious that we get into the other area of enhancement of the role of private members, the second part of the referral in the motion from the House, which has the broad scope of all kinds of areas that may enhance the role of private members. You know how quickly time goes by. If we've got four weeks left of sitting before—or three weeks—after next week it's three weeks.

**Ms Churley:** Then God knows when we'll be back.

**Mr Duncan:** The House doesn't have to be sitting for this committee to meet.

**The Chair:** No, I know it doesn't, but I think if this committee is going to have to do some—but that's the

best part; we can meet whenever we like, which is another question I really want to canvass the caucuses about. We can see by the rotation that we haven't had any rotation from the NDP or the Liberals—

**Ms Churley:** Nobody's willing to rotate with me.

**The Chair:**—but Thursday afternoons seem to be a bad time to hold these meetings. I would like you to think about another meeting day rather than Thursday afternoon. Also, if we're going to do some homework in the recess, we need to have done some homework before we adjourn, which is two and a half weeks of sittings, possibly.

**Mr Duncan:** Can I suggest, Madam Chair, that, first of all, I'm not in a position to discuss that today. Again, we were focused on the technology thing. Perhaps the first week back after constituency week would be appropriate for the subcommittee to meet and begin to narrow it down. Rather than keep all members here for that kind of discussion—as you know, I'm anxious to deal with that part of it, and we're prepared to sit when the House is adjourned or prorogued. But I'm really not in a position today to discuss those things. I will, however, be in that position the week following constituency week.

**The Chair:** As to what areas we would look at under enhancing the role of private members?

**Mr Duncan:** We'd be prepared to discuss all that at the subcommittee level, yes. The House resolution, as you're aware, is relatively broad. We're interpreting it in a broad fashion. We'll be in a better position when the House resumes after constituency week to offer our input into what, how, when, where. I think we've already talked about why.

**The Chair:** Does anyone else have any comment about how we should approach the other part of the motion from the House as to the responsibility of our work?

**Mr Tascona:** I don't have any difficulty with what Mr Duncan is proposing for now.

**Ms Churley:** I support that as well, but I would agree that we should be prepared to do it the week after on the subcommittee level, and we can scope down, all of us representing the conversation with our caucuses. It will make the discussion at the committee level easier and hopefully more efficient.

**The Chair:** Could we have a subcommittee meeting on the Monday and still have a regular committee meeting that week?

**Ms Churley:** It's OK with me. I don't know if you can.

**Mr Duncan:** It's OK with me. I suspect, based on our discussions at subcommittee before, there may be some difficult issues that we need to resolve. But, yes, we're prepared to do our best.

**Mr Tascona:** I thought you had to get a consensus from your caucuses. Is that going to be possible if we meet on the Monday?

**Mr Duncan:** If we meet on Monday it won't, no.

**Mr Tascona:** That's what I mean.

**Ms Churley:** That's true.



**Mr Duncan:** I guess you're right. It would have to be late Tuesday or Wednesday.

**The Chair:** What Lisa will do is call your offices and try to schedule the subcommittee meeting. Can I also ask her, as the pro tem clerk, to call the subcommittee members to find out if there is a time on Monday or Tuesday afternoon or Wednesday morning or Wednesday afternoon that we could move this meeting to, from Thursday afternoon?

**Ms Churley:** We could do that in the interests of ending this meeting now. We have had the discussion and we know that the reason why we kept it on Thursday is because each one of us seems to have another conflict, except for Monday mornings, which is a problem for members from out of town. I've got the alternative subcommittee, and I forget what else. But it just seems that between all of us we weren't able to find another morning or afternoon when we're all available. I could support your attempting to do it, however.

**The Chair:** I didn't formally ask you, and I think we need to clarify that. I see that we have a lot of very important work to do and I am anxious for us to be able to get it done. That's all I'm trying to do as Chair. I'm trying to drive the agenda forward so we can start literally getting our teeth into what is our responsibility. We've never had an opportunity before to look at the enhancement of the role of private members. I really think we have an opportunity on behalf of all our colleagues to make a difference.

Is there any other business today?

**Mr Duncan:** Yes, it's going on in the House right now.

**The Chair:** Are you moving adjournment?

**Mr Duncan:** I move adjournment, Madam Chair.

**The Chair:** All in favour? Thank you. Have a nice weekend.

*The committee adjourned at 1701.*

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## **Assemblée législative de l'Ontario**

Deuxième session, 37<sup>e</sup> législature

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Thursday 13 December 2001

Jeudi 13 décembre 2001

*The committee met at 1625 in committee room 1.*

## SUBCOMMITTEE REPORT

**The Chair (Mrs Margaret Marland):** I call to order this meeting of the standing committee on the Legislative Assembly. We are to receive the subcommittee report.

**Mr Dwight Duncan (Windsor-St Clair):** I move adoption of the subcommittee report dated Tuesday, December 4, 2001.

**The Chair:** The subcommittee report has been moved. Is there any discussion?

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** No.

**Ms Marilyn Churley (Toronto-Danforth):** Just briefly, on item 3, "That the Chair, in consultation with the subcommittee, be authorized to schedule committee hearings during the winter," I just want to make sure I understand. To date, we have not determined where we're going, so the subcommittee will have further consultations on that? OK, that's fine.

**The Chair:** The answer to your question is yes, for the record.

**Ms Churley:** Then I am fine with this report and will happily support it.

**The Chair:** Any further discussion on the subcommittee report?

**Mr Tascona:** Just that there's an attachment to it, which is investigation into private members' reforms. I don't know whether that's attached to it or separate from it.

**Mr Duncan:** That's separate.

**Mr Tascona:** OK, that's fine with me.

**The Chair:** The subcommittee report is the one page.

**Mr Jerry J. Ouellette (Oshawa):** Are we discussing that?

**Mr Tascona:** No.

**Ms Churley:** We don't need to discuss that today.

**The Chair:** All in favour of the subcommittee report of Tuesday, December 4? Opposed, if any? That motion is carried. Is there any further business?

**Mr Duncan:** I move adjournment.

**The Chair:** All in favour of adjournment? Opposed, if any? Thank you. That's good.

*The committee adjourned at 1627.*

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# Journal des débats (Hansard)

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Parliamentary reforms

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L'ASSEMBLÉE LÉGISLATIVE

Thursday 13 June 2002

Jeudi 13 juin 2002

*The committee met at 1608 in committee room 1.*

## PARLIAMENTARY REFORMS

**The Chair (Mrs Margaret Marland):** Good afternoon. We will start this meeting of the standing committee on the Legislative Assembly on Thursday afternoon, June 13.

## GRAHAM WHITE

**The Chair:** I apologize to Professor Graham White, who is our visitor this afternoon, for the delayed start. As you know, the House proceedings were delayed until about 20 minutes ago, as can often happen with multiple voting and other procedures during the afternoon. If anyone knows that well, I know that you do. We welcome you warmly to the committee and appreciate you taking the time to be with us. There are presentation notes that have been handed out to everyone's desk. I invite you to proceed.

**Dr Graham White:** Thank you very kindly, Madam Chair. Let me say that I'm extremely pleased to be here, in part because academics always welcome the opportunity to pontificate, but much more fundamentally because I truly feel honoured being here. As you know, I spent the better part of a decade working for the assembly, many very enjoyable hours sitting where my good friend Douglas is sitting—and, I hope, contributing to the process. It feels a little strange to be on this side, but I'm very pleased to be here.

What I propose to do is quite quickly, I hope, run through some notes here. Then I'm in your hands. If you care to discuss some of the ideas I have here, that's fine. If there are other things on your mind you'd like to talk about, that's fine as well.

Let me begin by setting out with a little elaboration some of the underlying premises that I bring to the ideas I have to suggest today. First and foremost, I recognize, and indeed applaud, the fact that the Legislature is a political place. It's about political conflict. It's about setting out differences. I'm no more enthused about mindless partisanship than the next person, but we need to recognize and understand, and not shy away from, the fact this is a political place. We need to deal with that.

Second, it's important to keep a fundamental balance in mind. On the one hand, the government must have the

ability to govern effectively without undue delay or obstruction, but, on the other hand, the Legislature has a duty to hold the government to account and to maximize democratic involvement in governing processes.

The third underlying premise is that, as you've doubtless discovered in your travels and your research, there are many functions that Legislatures can and do perform, but they can't perform them all well. No Legislature performs all functions well. You need to pick your spots. You need to look where the possibilities for improvement and success lie.

My suggestion, as you'll see, is to focus on accountability, and accountability of a non-financial sort. By that, I don't suggest that the public accounts committee is not an integral part of the process. I worked for the public accounts committee; I believe it's absolutely essential. What I do mean, though, is that I was paid for some years, among other things, to think about how one makes the estimates process real and effective. I'm still thinking about it and I still have no answers. Frankly, I think it's essentially a lost cause. There are much better places to spend your time and energy than on estimates.

The final underlying premise is that it's the committee system where the most promising possibilities for significant reform and for a meaningful role for the private members can be found.

I have a number of reforms to suggest to you. Before looking at the second page of the notes, let me throw in some significant weasel words here. Some years ago, I liked to think I was extremely conversant with the standing orders; in fact, I knew them inside out. This is no longer the case. I'm not at all up on the most recent few sets of revisions. I certainly looked at them when they occurred, but by no stretch of the imagination am I sufficiently conversant with them to be able to offer any kind of extensively detailed commentary. Having said that, I have three general thoughts in the way of reforms before we get to the notion of committees.

First and foremost—and I recognize there may be, shall we say, some political reluctance on this point—I have absolutely no doubt in the world the Legislature is too small. There need to be more members. This is to some extent an issue of representation of constituents, but from my point of view far more fundamentally there are simply not enough members to adequately staff the committees. Committees are important. Functioning committees are essential. There are simply not enough private

opposition members to staff the committees. Caucuses are too small. This is a multi-billion dollar operation. When Ontario came into Confederation in 1867, there were 82 members; there are now 103. That's not enough. Let me not belabour the point further.

Second, if you look at the standing orders of this place and compare them with standing orders of virtually any other Westminster-style jurisdiction, I believe you will find that political parties are formally mentioned and institutionalized far more often here than in any other Westminster Parliament. Many Westminster Parliaments make little or no reference to parties. Parties are there in terms of allocating questions in question period, committee chairs—it goes on and on and on. My view from afar is that there's not really a whole lot of danger that political parties will lose importance in this place, but it does mean that political parties are formally put light-years ahead of private members. Private members are nowhere when it goes to allocating time, questions, various other things, and I think that needs to be addressed.

There are a number of relatively minor—well, sometimes perhaps not so minor—procedural changes that I'd commend to your attention. First, omnibus bills have a use in terms of housekeeping and non-controversial things that can be done quickly and effectively, but I think it is a disservice to legislation and the people of Ontario to bring in many substantive policies through omnibus bills. My suggestion would be that they be permitted only through all-party agreement.

In a similar sort of vein, the standing orders are too important to give over to the political problems of the day with a change in government attitude. I therefore suggest that standing orders only be amended by virtue of a two-thirds majority. At any particular time, the government will always retain the possibility of bringing in a specific motion to deal with some specific problem, but I think the standing orders are sufficiently fundamental that they need to be changed only with a two-thirds majority.

In terms of legislative review of bills, I think that more attention—in an institutionalized way there needs to be sufficient time for members, citizens and groups to review and comment on bills, and that on major bills there need to be public hearings regularly and routinely held throughout the province.

Anticipating a little bit the significance that I attribute to committees, I think there should be written into the standing orders a provision that at least one hour a week be given over to debate on committee reports that have been produced and tabled.

Along the same lines—frankly I'm not sure if this is still a problem to the extent it has been in the past; certainly it was a problem when I was here and for some time afterwards—there is time allocated for second reading of private members' bills, but getting third reading time is much more difficult. I suggest that you consider recommending that two hours a month be given over to third reading for private members' bills.

The main points I wanted to draw to your attention were some suggestions about how to empower the committees. This would, I believe, enhance accountability and also give the private members an opportunity to become involved and exercise some influence.

First, I would suggest that there be a committee empowered, not necessarily a committee created—actually, I say that in the notes, that it wouldn't need to be a new committee but perhaps an existing committee should be empowered—to review on a regular basis the reports of the Environmental Commissioner along the lines that this committee and previous committees are empowered to review and comment on the Ombudsman's report.

If you think about how government operates in this country, there's almost nothing more fundamental and more pervasive than federalism. Canada is said to be the only country in the world where you can buy books on federalism at the airport. Federalism is a fundamental fact of life of governance in this country, and yet in Ottawa, Queen's Park and, to the best of my knowledge, most if not all other provincial assemblies, federal-provincial relations and agreements are almost entirely outside the realm of legislative scrutiny. I would therefore suggest that there be a committee created, and that this not just be tacked on to the mandate of an existing committee, but a specific, dedicated committee which would review—it wouldn't need to approve—all major federal-provincial policy agreements and all major federal-provincial financial agreements. Too much of what goes on in terms of governing in this country goes completely outside the realm of legislative scrutiny.

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The final two suggestions are very much of a piece and very parallel. I don't need to tell any member of this committee how important regulations are in the policy-making, lawmaking process. There is a committee to review them, but it's really hamstrung by a very narrow mandate. My proposal would be that a committee, the regulations committee obviously, be empowered not just to review all aspects of regulations, including their merits—the substantive policy behind them—but that they be given the authority to reject a regulation. However, following from the premise I enunciated at the outset, that governments do need the power to govern, governments would have the ability to override that rescinding by a committee within 60 days. In both instances, the committee would need to provide reasons why they thought the regulation should be rescinded and the government would need to provide reasons as to why it was reinstating the regulation.

Similarly with appointments, there is a committee which has the mandate to review appointments to government agencies. If memory serves, it does not have the mandate to review reappointments, which I think is a bit of an issue, but much more fundamentally, I think a similar process should pertain here. That is, the committee should have the ability to reject an appointee subject to, within 60 days, the government overriding that rejection. Now, with respect to both the regulations and appoint-



ments, clearly only a very small proportion of regulations and appointments would get a serious review. There's simply not time to review them all. Most of them are uncontroversial and of no great never-mind. But if committees are to have significant influence, I think this might be a useful way to empower them.

The final point here is that with the wonders of the Web, it seems to me there's no reason whatsoever why draft regulations and potential nominees to government agencies and boards—the text of the regulations with a plain-language translation, plus the resumé of potential nominees—shouldn't go up on the Web, perhaps 60 days prior to either the appointment or the regulation taking effect, so that everyone out there can review them and, if need be, feed comments to their members and to the appropriate committees.

With that, I thank you for your attention. I'm happy to discuss this or other matters.

**Mr Michael Prue (Beaches-East York):** Right off, I go to your suggested reforms on the first page. To much desk-thumping, the size of the House was reduced just in the last Legislature. Is this a realistic thing that one could expect, that the government would seek to say, "We were wrong," for the reasons you enunciated, and go back to it? I really hold out no hope, although I agree with you because it had ramifications not only for the size of this House, but for the size of the city of Toronto council. It had lots of ramifications down the road. Is there any chance of this?

**Dr White:** I trust you're not asking me to comment on whether the Premier is going to reverse any of the previous Premier's policies.

**Mr Prue:** He has been pretty good to date.

**Dr White:** There's a huge political impediment here. It's worth mentioning that by the next election it will be 108, I believe, because of changes that will happen in Ottawa, that Ontario follows on automatically.

**Mr Prue:** Yes, 106.

**Dr White:** It will go up marginally, but it's not enough. I understand the politics of this. Nonetheless, I actually was in this room when the bill was being debated and made the same points, to the same effect, but people need to understand it's not just about saving money and it's not a case of dissing politicians. If this is to be a major league institution, it has responsibilities. There are simply not enough members to carry on those responsibilities adequately.

**Mr Prue:** I have a number of questions. Do you just want one and pass it or—

**The Chair:** Everybody wants to speak. Go ahead for a few more minutes.

**Mr Prue:** OK. The omnibus bill: that's an interesting one. I think all Parliaments, the federal Parliament and all the Legislatures, use omnibus bills from time to time. We actually have one before us now dealing with a whole bunch of things respecting post-secondary education. I am finding it very difficult. There's only one contentious part to the bill and everyone has seized on it, and we have places like the Ontario College of Art, which everyone

agrees should have what's in the bill, sitting there wondering whether they're going to get it. Your recommendation is kind of unique, that it be permitted only with all-party agreement. Is there any other Legislature anywhere else that does that with all-party agreement or would this be breaking new ground here in Ontario?

**Dr White:** I haven't the faintest idea. This is certainly something that occurred to me. It wasn't suggested by experience elsewhere, but it's entirely possible they do. I simply don't know.

**Mr Prue:** All your other procedural changes appear to me to make eminent sense. I don't want to take up too much time. I refer to the second-last page, the referring of "all appointments and reappointments to government agencies ... government would have 60 days to overturn a committee decision to reject a nominee." Again I ask the same question: is there any other place in Canada that has a similar provision?

**Dr White:** I believe not, but this was inspired by what previously was—and I'm simply not au courant enough to know whether it's still true. Perhaps Mr Sibenik could tell us; in fact, you may have learned this when you were in Britain. The British House had a procedure not unlike this with respect to regulations.

**Mr Prue:** So there is another example.

**Dr White:** There's an example of it with respect to regulations. I'm not aware of any other jurisdiction that does it with respect to appointments.

**The Chair:** The list I have is Mr Duncan, Ms Munro, Ms Di Cocco and Mr Tascona.

**Mr Dwight Duncan (Windsor-St Clair):** Some rapid-fire questions, Graham. First of all, a bill in Ontario can be passed now in roughly seven calendar days, four sitting days. What would you see as an adequate amount of time?

**Dr White:** I'm not sure I can give a quick answer to that. Underlying all those sorts of issues are give and take. It's an attitude. It's much the same as why I didn't say private members should be free to voice their opinions and not have the heavy hand of party discipline. You can't really write that into the standing orders. It's an attitude that one brings to governing.

**Mr Duncan:** On major bills, how do you define "major"?

**Dr White:** The same thing.

**Mr Duncan:** That would be agreement by the House leaders or some other—

**Dr White:** I'm not sure how you do it, but again it's a question of underlying attitudes and expectations, that as a matter of course if a bill turns out to be of major consequence, then it needs significant treatment.

**Mr Duncan:** Last question, the review of appointments: would you include deputy ministers, assistant deputy ministers and members of the bench in a scrutiny process?

**Dr White:** Probably not members of the bench. I'm not a constitutional expert, but I think that might tread a little bit on independence and perceptions of independence of the judiciary. I distinctly dislike the American ap-



proach to this. Deputies and assistant deputies, I'm inclined against frankly. I think that needs—

**Mr Duncan:** Against?

**Dr White:** Yes. I think that needs to be the government's prerogative. The reason for suggesting with respect to agencies is those appointments are qualitatively different, I think. Deputy ministers and assistant deputy ministers are there in the line of normal ministerial responsibility and all that other procedural paraphernalia in a way that agency people are not.

**Mr Duncan:** One last question. We have looked at the British committee system, and I expect we'll be looking at that very carefully. Are you familiar with that system? One of the observations I had in looking at that was the way members can develop a certain expertise on a topic through the select committee system. They do have, obviously, lots of members, and I see where you're going on that. Apart from the issue of the number of members, would you agree that it would be a wise recommendation to try to create a committee system or reform our committee system to allow an opportunity for members to gain an expertise either in a ministry or a subject matter through a continuing membership on a committee with a more meaningful set of roles, if you will?

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**Dr White:** It has been a long time since I was really up on the British committee system. I was part of a wonderful trip with this committee's predecessor in 1982 to Westminster, and kept up for a while, but it has been a while since I've been on top of things. In terms of the substantive question, yes, unquestionably that would be a useful sort of thing to do. However, that's again not the kind of thing you can write into the standing orders, save and except an area that I was going to touch on but I realized I was simply not familiar enough with the details of how it works.

One of the great bugaboos when I was a clerk here I suspect is still a bugaboo, and that is substitution. You simply can't run an effective committee system, you can't develop that kind of specialized expertise, if people are being substituted in and out. Now, I'm a realist enough to know why substitution happens. Partly it happens because there aren't enough people running around, but even if there were, there are legitimate reasons. It's a balance. There are costs for not allowing frequent substitution, but I think there are significant benefits. Yes, very much I would support development of members' individual expertise. The only formal way, I think, one could do that is to bring in changes to the standing orders to make substitutions less frequent.

**Mrs Julia Munro (York North):** I must say that when I look at the pages you've presented to us, your last point on the first page about the committees offering the most promising possibilities I think is something, in looking back on what we have learned through our meetings with others in other jurisdictions—that is the area that we've agreed has that potential. So I found it interesting that that was something you identified as well.

On the second page, where you talk about procedural changes, the third bullet refers to sufficient time for people to review and comment. I wonder whether or not you are prepared to comment on a practice that we have done—to a certain extent, I would qualify—of engaging in public hearings before second reading, and whether that is the kind of thing you would see satisfying this concern that you've raised.

**Dr White:** I think it's a good idea. I would support it being done on a regular basis, particularly if you're talking about major controversial bills, because of course once second reading has happened, technically arguments about the whole being a bad idea are out of order. But more fundamentally, I think it involves people earlier in the process.

Having said that, there is still the issue—and I didn't particularly give Mr Duncan a good answer and I can't give you a good answer—about what's a major bill and how much time. But I think there has to be an acceptance and understanding that, yes, the government has to be able to count on getting its legislation through in some reasonable time, but that doesn't mean immediately. Sometimes the price of having a Legislature and a democratic system is lots of people need to have their say. It's slow and it takes time.

**Mrs Munro:** I appreciate that. One of the things we heard at Westminster is a process that I think is referred to as programming, where I guess the House leaders would make the decision in looking at the government's agenda and picking those items which they felt would require extra time, and the matters they either fundamentally agree with or don't have a huge issue with would receive less time. I think that would perhaps speak to the issue you've raised in terms of how you define those, because I think they're probably less defined politically. What's a major bill doesn't have to be the length, obviously; it's more accurately the issue around policy and the comfort, if you like, of the policy.

The next point: you refer to the public hearings throughout Ontario. Certainly as a member I have travelled throughout Ontario on this process, but one of the things that I would ask you to comment on is the fact that we seem always to be going to the same places. Even with bills that sometimes are germane to a specific area—not geographic area, because my experience there has been that we have then gone to those geographic areas, but rather sectoral area, I guess would be the more accurate way of putting it—those hearings have not been sensitive, in my view, always to those sectoral issues. In terms of something to do with agriculture, it's obviously better to go to Kemptville than to London or wherever. So it has occurred to me that perhaps the notion of public hearings should be more expanded in the area of the technology. To me, the ultimate should be that anyone who wishes to has that kind of access. Obviously, with a province this size, it would seem to me more efficient, and frankly equitable, to have greater acceptance.

There are obviously two sides to that argument, and so I guess my question to you is, do you think that is a



realistic direction that we should be looking at in certain cases?

**Dr White:** Let me briefly address the first question about the major political decision. I agree entirely: these are political decisions. I also very clearly recall being struck on that trip to Westminster that I mentioned of the level of maturity that the parties and the whips, who do more of what we would call a House leader role here, exercise. In particular, the assistant to the chief government whip spoke with us. This was at the height of Margaret Thatcher's government. There was major confrontation about something or other, and he told us about how the Labour whip had come in and said, "Oh, Murdo, we're going to have a fearful row over this bill. It's absolutely unacceptable. It's destroying British society as we know it." "Sure. OK. How long is the row going to be?" "Oh, two days should do it." "And what do you want at the end?" "Well, we want this and this and this," and it was done. There was an understanding that, yes, the government has to get on with it and, yes, the opposition has to do its thing.

All I would say in addition is that I guess implicit in "major bills require time and attention" is that if it's uncontroversial, if it's not a big deal, get it out of the way in half an hour, 20 minutes. So, yes, I agree with that.

On the public hearings, again I agree. I suspect that the same usual circuit of where committees go to hasn't changed since I was setting up the meetings and I suspect that members probably stay at the same hotels that we used to stay at for our public meetings and so on. While on the one hand you want to hit the population centres where there's going to be a concentration of interest and groups and so on, it means that certain people are systematically excluded from the process. I think one needs to be a little more inventive and a little less reflexive when indeed it is time for public hearings and where you are going to go.

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As for the other suggestion on effectively using the wonders of communications technology, there are certainly enormous possibilities and I think they should be explored, should be used. They do raise questions. I think you used the word "efficient." In some senses, obviously yes. On the other hand, the number of people who might care to take advantage of it might be infinite and unmanageable. So political decisions would be needed on that.

At the same time, while I think there are huge possibilities for using that route and public input—and let's not forget that it's not just about public input in terms of ideas. In fact, frankly, much of it is about legitimizing the process and combating the cynicism that the public has about politics, the Legislature and the process. It's important, but at the same time there is nothing like having the politicians there in person, in the flesh. A combination I think would be useful, but I would very much think it's still critically important that after the meeting, before the meeting, individual citizens, group representatives, be able to come and talk informally, to

witness the process at work. I would regret very much if that aspect of it were lost.

**Mrs Munro:** Certainly I'm not in any way suggesting that it's an either/or situation. I do agree with you.

The final point I wanted to ask you to comment on, because I think Dwight talked a bit about the notion of developing an expertise within a specific legislative area or areas, is your third point about the regulations. I wondered if that would work at cross purposes from any kind of committee that was designed to develop an expertise in a cluster of ministries, say, or topics or whatever. It just seemed to me that it might work at cross purposes from the suggestion that he made. I wondered if you have any comment.

**Dr White:** I don't think it would need to. The model perhaps might be the public accounts committee. The current regulations committee, unless things have changed dramatically in the past few years, does noble and important work, but—Mr Tascona will forgive me—it's lawyers' work. It's very detailed; it's very technical. It doesn't get at the policy substance. That's what politicians, members, are mostly interested in. In the same way with the public accounts committee, I think that one can be a member, and an active member, of the public accounts committee and contribute one's particular expertise, be it in social policy or agricultural, to issues of that nature before the committee, and I think you could do the same thing with the regulations process that I propose.

**Mrs Munro:** Can I have one more?

**The Chair:** Fine. Well, Mr Tascona is groaning.

**Mrs Munro:** I just wanted to comment on your idea about reviewing the federal-provincial because we heard it elsewhere, that there were concerns about the fact that those seemed to be done, whether you're at the federal level or the provincial level, in complete isolation. That would certainly strike a sympathetic chord, I think, in other jurisdictions as well as ours.

**The Chair:** I have Ms Di Cocco, Mr Tascona and Mr Arnott.

**Ms Caroline Di Cocco (Sarnia-Lambton):** I have a couple of questions for you, or statements that hopefully you can comment on. I'm sorry I missed your introduction. I was here just biting at the bit to hear it, but then I was called out. I do apologize.

Something that's always been really important to me is this whole notion—you say a focus on accountability. What top areas do you think we need—let's put it this way—to make our accountability measures in this Legislature better? What areas do you think, in your observation?

**Dr White:** I would say unquestionably federal-provincial agreements, and regulations.

**Ms Di Cocco:** There are two areas of the omnibus bill that you spoke about, and you think this is something that maybe we should use with some discretion.

The other area I found was the Henry VIII clauses. I've only been here since 1999, but it seems to be an expedient way to give regulatory powers in a way that



would not be seen as democratic, because it changes the intent of the legislation. Can you make some comment about it? The bit of research I've done on it shows that it's been done more over the last number of years than—I think it started in the early 1990s to some extent, but it's really been used a lot. Can you comment on Henry VIII clauses? That's what concerns me more about the whole notion of accountability as well.

**Dr White:** I'm afraid I really can't. I'm certainly familiar with the idea and I've heard some of the criticisms, but I simply don't have the legal expertise or the familiarity with the particular cases to be able to comment intelligently.

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** Thank you, Professor White, for your presentation. I have a couple of questions, starting with suggested reforms.

The increase in the number of members in the House: is that, in your view, necessary to do committee work, or would it be directed at a member being able to better represent their constituents at that level?

**Dr White:** I think there are benefits to the ability of a member to represent his or her constituents, but there are other ways to deal with that. The fundamental reason for doing it, in my view—sorry; let me backtrack. There's the special northern Ontario situation. Northern Ontario was a region that had its representation particularly cut back. But while I would prefer to see more members to give better representation, fundamentally my suggestion is that you simply need more members not just for committees, but to have adequate-sized caucuses, both opposition and government.

If we're talking about developing expertise as individual private members, if an opposition caucus doesn't even have enough members to cover off all the main ministries, they're hamstrung. Obviously that's partially in the voters' hands, but it's also partially in the hands of the people who devise the electoral map and the number of members. If there are 130 or 150 members, the proportion of seats the third party or the second party will get will be more and you'll have larger opposition caucuses. You'll also have a larger government backbench and reduce some of the pressure on government backbenchers to fill in all over the place and to spread themselves too thinly.

**Mr Tascona:** But I think the system would be proportional representation if you wanted to accomplish that.

**Dr White:** I favour proportional representation, but I think that's a totally separate argument you can have either with a small House or a large House. I'm suggesting that whatever the electoral system is—and I don't see that as your mandate here—you simply need more members, however you end up with them.

**Mr Tascona:** Certainly I've found there's an issue with respect to the matching of the federal boundaries. As a member, that has proved beneficial, because you can work together with the federal member in areas that affect you directly and you have the same constituents. But I guess your argument would also apply to the

federal level, that there are not enough members at their level?

**Dr White:** No, I'm not sure I'd make that argument. The argument is the number of members available to sit on committees and to serve caucus functions like being critics, parliamentary assistants or what have you. In Ottawa, when you have over 300 members, that's probably enough. There are separate issues about representation, but in terms of having enough people—if you think about it, the budgets don't provide a useful comparison. If you think about what the Ontario government does in comparison with what the government of Canada does, the Ontario government has at least as wide a range of activities, and because so much of the federal budget is transfer payments anyway, its budgets are roughly comparable. Yet there are three times as many federal MPs as Ontario MPPs to be on committees, serve as critics and do other things members need to do, quite separate from the representation issue.

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**Mr Tascona:** I understand. I like your comments with respect to debate of committee reports and debate on third reading of private members' bills. I think that would enhance the role of private members. Certainly all of us look forward to every Thursday. We get two hours to debate when we're in session to deal with that. You were here for what period, 1974-84?

**Dr White:** I worked in the Clerk's office from 1978 to 1984.

**Mr Tascona:** Was private members' the same as it is now?

**Dr White:** Essentially. There were some minor changes, but the problem of bills passing second reading, even going out to committee and perhaps coming back and then languishing or dying for lack of an institutional mechanism for third reading was a problem then.

**Mr Tascona:** To give private members a greater role, we're allowing two hours per week, and this is two hours per month.

**Dr White:** Excuse me, it wouldn't necessarily need to be an additional; you might simply allocate one of your Thursday mornings to third readings rather than second readings. It wouldn't need to be additional time. It could be, but it wouldn't need to be.

**Mr Tascona:** I understand what you're saying. One other area, then, is in the accountability end. This committee does deal with the Ombudsman. I think we have a pretty good relationship with the Ombudsman, and the methods we have in place to deal with him. You're recommending the Environmental Commissioner. Why did you pick on the Environmental Commissioner? There are lots of other commissioners out there.

**Dr White:** Not who are officers of the assembly, who don't have an independent mechanism. The auditor has the public accounts committee. The Ombudsman has this committee. I thought about putting in the Information and Privacy Commissioner, but that's a rather different kettle of fish. In terms of policy substance, the Environmental Commissioner is the outlier here.



**Mr Tascona:** Just from a policy point of view.

**Dr White:** Yes.

**Mr Ted Arnott (Waterloo-Wellington):** It's a pleasure to see you here, Graham, and to hear your views. I want to get back to your suggestion of increasing the size of the House. As we all know, there were 130 members of the Legislature and we went down to 103. I spoke to the chief elections officer, Warren Bailie, before we did this and he indicated to me that we were due for a redistribution anyway. Under the old formula that he would normally have employed, we would have gone up to 151. That's what he told me. So I look at it as an even more substantial downsizing than 130 down to 103, if under the old way of doing things we'd have 151. That would create a totally different dynamic in the Legislature. What do you think would be the optimum number of MPPs? Do you have a number in your head that you can—

**Dr White:** I was afraid someone was going to ask that. I would think something in the neighbourhood of 150 would be reasonable. You have to step back and—I know what the optics are politically, and I understand that, but in terms of cost, it's peanuts. It really has no great never-mind. There's a threshold. I don't really know what it is, but it seems to me there's a threshold when you have enough private members on the government side and on the opposition side that they can start to make some influence felt, independent of the party leadership. I'm not talking about huge revolts but just exercising a little bit of independent influence.

This is one of the great things about the British system. They are way over 600, and they also have a huge number of safe seats, which makes life rather more interesting and livable for private members. Nonetheless it's clear that the dynamic there to a great extent turns on their interest in committees. Due to the fact that there are so many of them, committee spots are valued and expertise is valued. Whether that would happen with 150 seats here, I don't know, but certainly it has to be significantly more than the present number.

**Mr Arnott:** My riding is about 100,000 people; my riding used to be about 60,000. I've noticed a substantial increase in the workload, yet I would never admit that I couldn't handle it. None of us would want to do that, I don't think, on the record or otherwise privately. Certainly the workload is substantial for all of us. I haven't got the largest riding in the province by any means, but I have Clifford in the north and Punkeydoodles Corners in the south and I can't be in two ends of the riding on the same afternoon. It's impossible. So you are stretched, to some degree, in terms of your physical presence at various locations in the riding where people want you to be. But certainly there have been improvements in transportation and communications over the years, which have enabled us to represent a larger riding, perhaps, than those members who were privileged to be here 100 years ago.

**Dr White:** I agree entirely. Having said that, though, the increase in the number of constituents that you and all

the other members have had to deal with is taking away time from your legislative duties.

**Mr Arnott:** Oh, no kidding.

**Dr White:** I am very much of the view that constituency work is absolutely critical, not just to serve people and to help them out, but to give members a sense of what the policy issues are and all the rest of it. But it takes time away from being a legislator.

**Mr Arnott:** Your comment on omnibus bills: from time to time, all governments have introduced omnibus bills if there is a compelling reason or they feel a necessity to do so. I don't think you'd ever get all-party agreement on the need. Sometimes the government identifies a need and feels it's required. But I think your suggestion would mean there would be no more omnibus bills, most likely, unless in times of absolute provincial emergency or peril, I suppose.

**Dr White:** Let me say two things. One is that I was expecting someone to ask me how one defines an omnibus bill, and I'm not sure there's an easy answer to that. I can't speak for the time after I left here, but certainly when I was here—and I actually looked into this as part of my responsibilities—the only omnibus bills that I remember coming through were literally housekeeping bills. They were sometimes very substantial in size and length, but they were all very minor changes that excited no interest or attention whatsoever.

The fundamental issue here, I think, goes back to one of the points I made at the outset. Yes, it's very convenient for a government to be able to deal with a lot of problems—I know how precious legislative time is—but if there are substantial changes going on, then there needs to be adequate opportunity for the Legislature to address them, and there is a countermanding requirement on the part of the opposition to identify things that aren't important and just let them slide by and concentrate on the important issues.

Unquestionably, there would be operational questions about how exactly you define omnibus bills and the politics of, "You say it's an omnibus bill, I say it's not." Nonetheless, it's the underlying principle and attitude that there needs to be adequate time for the Legislature and its members to review substantive policy questions that can become very difficult with an omnibus bill.

Let's not beat about the bush here. The omnibus bill that was introduced early in your term in office had enormous implications, and it's not a case of whether it was a good or bad policy. There were huge chunks of it that made major changes that, because they weren't quite as evident or as obvious or as controversial as some other parts, simply didn't get the attention they deserved. I just don't think that's appropriate.

**Mr Arnott:** I would agree with you that Bill 26 was a substantial bill. I would also say that the government was wrong to initially refuse to allow public hearings—absolutely wrong. It was only after a series of extraordinary circumstances—we sat all night long in the House—that finally the government agreed to public hearings.



But I would say in response that there were weeks of public hearings and I think most of the contentious issues were extensively debated during the course of those public hearings. So when I see an omnibus bill, I'd say there may be a compelling need for an omnibus bill from time to time. But if it's a contentious issue, yes, there should be public hearings, and extensive public hearings, if need be.

Changes to the standing orders: if we said that no more changes to the standing orders would be made unless there is a two-thirds majority, my concern is you'd be freezing the standing orders for all time, unless there was an overwhelming majority in the House where one party won two thirds of the seats.

**Dr White:** My position would be that these are standing orders of the entire assembly, and unless there's agreement on them, they shouldn't be changed. Again, my apologies for losing things in the mists of time, but certainly I was involved in a number of major changes to the standing orders during a minority government as well as a majority government and the entirely accepted principle was you did it with all-party agreement and there were trade-offs between the government and the opposition. There were things that either side didn't like or would have liked to put in, but unless there could be agreement on it, you don't change the fundamental rules unless there is significant—I didn't say unanimity. Two thirds is picked out of the air, clearly, but I think you need to accept that you don't change the standing orders unless there is underlying agreement. As I said, if the government wants to override a single standing order, it can always bring in a government motion and have it overridden for a particular instance.

**Mr Arnott:** Last, private members' bills: as a private member, I get a chance to have a private member's bill debated approximately once every 18 months or two years. To me, that isn't enough. I'd like to see more opportunities for debate on private members' bills. One simple way would be to perhaps have three items dealt with on Thursday morning; so we would start at 9 o'clock.

You've pointed out that quite often the third reading time isn't sufficient, but typically we deal with third reading of private members' bills the last night the House sits. It's based on some sort of a negotiated agreement amongst all three parties. Sometimes there are a couple of government bills and one from each of the opposition or whatever. Would you agree there should be more opportunities for members to bring forward private—we can introduce them in unlimited number now, but in terms of having one debated for one hour, you get a chance every 18 months or so. To me, that's not good enough.

**Dr White:** Were it personally up to me, I'd say yes. The question then arises: time is not infinitely expandable. What do you do? Frankly, a huge proportion of the time in the House debate is set pieces. Nobody's really listening. They're time fillers. Not much would be lost by reducing that kind of time, not through draconian

changes to standing orders but, again, an understanding that if the private members are to get more time to do their business, then they're going to have to exercise more self-discipline in debates in the House.

I'm pleased you didn't raise the issue that if there were 150 members, you'd have even less time to—or your 18 months would probably expand to 24 months between opportunities to debate your bills.

**Mr Duncan:** I just wanted to comment that the last and most significant changes to the rules happened in 1999. That was achieved by consensus. As a matter of fact, we signed off on it. The only observation I would make about that is that it was tied into allocation of funding for political parties and caucuses. There was an anomaly created because of the election result that saw the governing party's caucus allocation, under the old formula, would have been less than the third party's. Because in effect, the old formula funded you as though you had 30 members. It wound up with the unusual anomaly that the party that got hurt the most was the governing party, because of all the changes that had happened. But we did achieve consensus, and there was give and take.

One of the reasons we have reluctance in entering into this committee to study this issue is because the government does have a majority on a committee and that standing orders, in our view, ought to be done and changes ought to be achieved through consensus.

**The Chair:** Well, just to clarify your last point, when you're suggesting that this committee couldn't make recommendations for changes—

**Mr Duncan:** No, not at all.

**The Chair:** What are you saying?

**Mr Duncan:** We on good faith agreed to participate.

**The Chair:** Yes.

**Mr Duncan:** Listen, we caucused it, whether or not a committee—

**The Chair:** Oh, I see, because you don't have a majority.

**Mr Duncan:** No, because the government does have a majority and historically, notionally, the idea that changes to the standing orders or changes to the way this place functions have been achieved by consensus. That was broken I think in a first major way in 1992 by the government of the day. I wasn't here before then so I can't comment, but arguably, some of the changes in the late 1980s, where there was give and take, were still imposed by governments, but then the 1997 changes were imposed. But in 1999—and I said this publicly and I signed the document—I thought the government of the day, your government, negotiated in good faith. We didn't get everything we wanted and they didn't get everything they wanted, and we managed, I thought—including going to committee after first reading. My hope is that will continue to be the *modus operandi*.

**The Chair:** Thank you for clarifying that.

**Mrs Munro:** Do we have time for any more questions?



**The Chair:** Well, yes. We do have other business that we will be moving to as soon as you finish, but go ahead.

**Mrs Munro:** Because the conversation was most recently on the issue of private members, I just wanted to get your opinion on that function, because I've been in the position of being able to introduce both a resolution and a private member's bill, but I've also been on the other side of the fence, so to speak, on the issue of actually accepting the private member's bill from a ministry point of view. It seems to me that as individual members, we're not often in a position to be able to have a private member's bill that is really workable. That's the only way I can explain it. So I think it's important to have this function. I would argue that it would be nice to be able to do it oftener. I say "nice" guardedly, because that's, I'm afraid, as far as it'll be.

But I'm also conscious of the fact that, as an individual member, we just don't have the kind of resources and stakeholder management and all those things that a ministry has. So you can, as an individual, respond to a situation that you think is an appropriate way to deal with this and, of course, when a ministry then tries to become the lead ministry in terms of the bill—whoa. There are all kinds of problems that emerge.

I'm wondering whether or not private members' bills should be viewed not so much—and this goes to your point about third reading, where they do happen to click and do happen to be something that, yes, you can bring forward and so forth, that that opportunity would be made available. But where, quite frankly, in the minds of the original author, they create some really serious unforeseen legal or logistical problems, it seems to me that the individual member should be seen to have brought attention to a specific issue and perhaps then prod government to be looking at ways to address that kind of issue, but not be seen as being defeated in that context. As I say, I've been on the other side where there's been a genuine effort on the part of the ministry and the government to look at a particular piece of private legislation to see, "Is it workable?" So I think perhaps that has to be part of the conversation when we talk about private members' bills.

**Dr White:** I agree. Essentially what you're saying is that with power comes responsibility. Part of my answer would be that one would need to recognize that there are different reasons for private members' bills. There are

some private members' bills that are brought in because members have a genuine policy interest and are trying to affect the law of the land; there are other instances where it's purely political, perhaps for local constituency reasons, perhaps for party reasons, all kinds of reasons; and there are other reasons why one does private members' bills as well. So yes, that would need to be taken into account.

I might also add that although I didn't want to get into too many details—I've spent too much of my life in amateur attempts to rewrite standing orders that I don't want to do this—my notion here of dedicated time to third reading for private members' bills would not imply an automatic right to a third reading for a private member. Like it or not, one of the fundamental principles of our system of government is that the government retains control over the order paper and the government calls—or not—government bills for third reading. I would be very leery of a system whereby a private member could, in a minority government situation, force through a bill. There are political pressures one can apply and hope the ministry takes it seriously and so on, but my hope would be that this time for third reading would be done in consultation among the parties, the House leaders, but that ultimately the government would retain the power to decide whether or not to call a bill, for exactly those sorts of reasons.

**The Chair:** It's very interesting. Professor White, I would like to thank you very much for being here with us this afternoon. It's certainly been a privilege for our committee to be able to spend this time with you. We very much appreciate your willingness to answer the questions and listen to our members in the gracious way in which you have and we thank you again for your time and effort to be with us.

**Dr White:** You're most welcome. I am truly honoured to have been here and taken part in the process. Good luck in your deliberations.

**The Chair:** Thank you again.

We will now resume our closed session, so we will complete this part of the open meeting. We need to revert to giving some direction to our researcher and there are two other business matters that I would like to talk to the members about.

*The committee continued in closed session at 1714.*

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Parliamentary reforms

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## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Thursday 20 June 2002

Jeudi 20 juin 2002

*The committee met at 1536 in committee room 1.*

## PARLIAMENTARY REFORMS

**The Chair (Mrs Margaret Marland):** Good afternoon. I'd like to call this meeting of the standing committee on the Legislative Assembly to order on Thursday, June 20.

It's a great pleasure to welcome Professor David Docherty to join us this afternoon. We've been anticipating your visit, Professor Docherty, and we know it's going to be an interesting opportunity for the committee members. Perhaps we can start with your presentation. You'll find that the members will have lots of interesting questions, I'm sure. Welcome.

**Dr David Docherty:** Thank you very much. I'm very pleased to be here. I guess it began when I e-mailed Mr Arnott—MPP not the clerk—when he was leaving for the UK and was part of this committee. I indicated that I was really pleased to see that this committee was looking at this issue and we then had a phone conversation that led to this, which I am very glad about.

As someone who's interested in the political process myself—I was an Ontario legislative intern here in 1984. I was told in September 1984 that Ontario politics was relatively dull and not much was going to happen. I came when Bill Davis was Premier and left when David Peterson was being sworn in on the front lawn, so it certainly was an interesting year and sparked a lot more of my interest in matters of legislative studies. If someone who is interested in this—I'd almost prefer to listen to you, but I will take advantage of a few minutes to make some comments.

My understanding when I was asked or in my discussion about what we were talking about was relatively restricted to questions of making private members or backbenchers more integral to the system or giving them a greater role within the system, and that we're not really talking about larger questions of legislative reform that may or may not include electoral reform or those types of issues. So I'll try to confine my comments particularly to those kinds of internal matters, although I'm happy to talk about the impact some of those changes, say, to PR or alternative vote systems or other systems might make on the role of the private members. If there's a discussion about that I'm certainly happy to talk about that, but I'll start by talking about the other issues.

To begin, when I was thinking about what to talk about, I kind of went back to what I would talk about in a first-year class, recognizing that you know an awful lot more than I do about this system. I remember, as a PhD student, spending a day on the campaign trail as part of a participant observation with a sitting member of Parliament. I was spending it with a number of candidates and sitting members as part of my doctoral work, and I convinced this person that their seat was safe, that there was no way they could lose and I had these models to prove it. This person, who was a Conservative in Ontario in 1993, told me early on in the campaign I was full of hokey, that I just didn't know people. This was still when they were riding very high in the polls. So when I say things, presumably from an academic point of view, I'm the first to admit we know so little. So please take what I'm saying within that spirit.

When we think about some of the functions of Legislatures, and we can think about the kind of classical Bagehot functions, or Ned Franks of Canada, or Phil Norton, they talk about how Legislatures have to allow a government to work, they have to provide government with funds etc, and then there are other duties. I think we often forget about those two important things, that Legislatures have to allow a government to function. I think we do have to recognize that's an important part of the process. I'm not necessarily going to talk too much about that because I think too often we just assume that's the case, but I think it's important to keep in the back of our minds.

Then I think, OK, private members do that. That happens after an election, so a lot of that is just by rote or that happens anyway, so we think of the larger functions of members of Legislatures per se. We think of the legislation function—to examine, support, oppose, amend legislation—and allow the public to offer comment on legislation as well. We can think of the scrutiny or accountability function, that is, to ensure that there is an effective check on what the government is doing, or the government's authority, not necessarily to block it but rather to question it and, in many cases, allow the public to understand it.

Also, the representation function is very large, and that is representation not only to constituents but often to others who may not live in the physical riding. Through the critic role, part of the representation function is not just to represent people in a particular geographic area

but to speak for larger voices as well. My comments are going to intermingle between these representation, legislation, scrutiny and accountability functions.

First, though, it's very important to recognize, if we're talking about how to change things, some things that I think the Ontario Legislature and the men and women who serve in it do very well, and one of those things is representing constituents. By and large, Ontario voters are very well served by their members of provincial Parliament. Maybe this is the beauty of tenure, but I may be one of the few people who's not afraid to say publicly that I think MPPs are worth every penny they're paid.

**Mr John O'Toole (Durham):** How about more?

**Dr Docherty:** I'll get to that in a bit.

When I've been asked by the media or others to comment on lazy politicians, I ask them to show me one. I then ask them how many of them would like to give up their job, give up their house, live in two different places and travel back and forth. You're all familiar with that.

**Mr O'Toole:** That sounds like me.

**Dr Docherty:** Yes. In an interview with one MPP some years ago, they told me at the beginning that the three most important things to them were church, then their family and then politics. After a 40-minute discussion, I said, "After asking about how you spend your days, you're never in church, you rarely see your family and you spend all your time doing politics."

**Ms Caroline Di Cocco (Sarnia-Lambton):** That's reality.

**Dr Docherty:** Yes, that's reality.

In representing constituents, by and large, I think Ontarians are well served and I want to make that clear. I'll be talking a little bit about the size of the Legislature, and I think the diminished size has created some problems. My concern is that it's not just here in Ontario but in the past 10 years five Legislatures in Canada have reduced their size. My concern has doubled by not just the fact that they've reduced their size, but that cabinets have not been reduced accordingly. If part of the job is for private members to keep government to account, I find it very disturbing that cabinets are not shrinking the same as Legislatures are. I'll get back to that in a little bit as well.

Second, I think at least compared to other provincial Legislatures in Canada, most of them, committee hearings are another one of those areas where Ontario is well served and where you, as MPPs, can be justifiably proud. It's very important that committee members hear from the public when bills are being debated and sent to committee. There's certainly room for debate about the extent of public hearings we've had in the past in Ontario. Were they long enough? Did the committees travel the province as widely as they should? Did they go to as many different parts of the province as they should? There's certainly room for debate about those kinds of issues, and it perhaps depends on where you stand what your answers would be to those.

My own view is that on too many issues in the past few governments—Conservatives, New Democrats—

committees did not demonstrate enough independence from the government to say, "This is where we're going and this is how long we're going to take." But that is a matter—I understand the problems inherent in a committee saying to the government, "This is where we're going and this is how long we're going to take," but I do think there's something to be said there.

However, when you look comparatively—something I'm doing for a project now; I was in touch with different Legislatures trying to find out about their committee process and how easy it is for groups to appear before committees—Ontario is not poorly served by our legislative committees. I think we're well served. British Columbia, if you want to look at a model that might be very nice, has a great system in place where they essentially walk interest groups or individuals through how to prepare for a hearing at a committee or a presentation to a committee. It's a really nice set of guidelines that helps expedite the process.

However, having said that, you go to Alberta, where they just simply don't hear from anybody. If they bother having a committee hearing at all, it's always a special committee. Saskatchewan just recently began the process of travelling, and who did they turn to for advice? They turned to the Ontario Legislature to find out how a committee should travel to hear input. I just again want to get that on the record.

Where is there room for improvement? It's one thing to travel and hear from witnesses before committees, but I think committees must be seen to be open. Major legislation has in the past generally been seen by the public as being given only perfunctory consideration by committees. Whether that's true or false is not necessarily for me to say, but I do think there was a sense that committee hearings were used more as a legitimization function than an attempt to solicit input from the public. That's something committees have to think about. There are two problems here: first of all, not hearing from enough people. This is a tough one because there's no correct number of people to hear from. At some point in time, a committee does have to get on with its business and you just can't hear the same arguments over and over again, and I understand that.

But, secondly, and more importantly, the decisions have already been made by the time legislation gets to committees. This is the more serious one, but it's also the one where there's room to manoeuvre and room to work on. This is not a slight on the Ontario Legislature. It's true in Ontario, but it's true in all Westminster Legislatures. They wrestle with this problem. We send a bill to committee after second reading, after it's already been agreed to in principle, and how much are we really willing to change after we hear from the public? How do Legislatures provide the opportunity for input prior to introducing legislation that a government—not a Legislature but a government—wants to stake its reputation on? I think that's a good question.

The changes that were made to provide committees with what the Brits would call the "power of pre-



legislative scrutiny” or what we might call “early legislative scrutiny after first reading” is a very good step in the right direction. Of course if it’s not used, then it can appear as little more than window dressing. Once you have tools and you don’t use them, it’s almost as dangerous as not having them in the first place because then a sense of frustration develops. I think of most recently—and I won’t comment on the issue per se because that’s not my interest or role—Hydro One as a perfect example of something that could have been sent to a pre-legislative committee for discussion, debate and witnesses. Why wasn’t it?

That leads to my next point, which is sitting days. It’s a big concern and I think it’s the fact that the Legislature is sitting less and less. I understand this year was a bit of an anomaly with the leadership, but the Ontario Legislature is not sitting as often as it was five years ago, 10 years ago, 15 years ago. I think this is based on this false US notion that—Texas has a constitutional amendment that prevents the Texas Legislature from meeting for more than 13 weeks because there’s a fear they might actually do something if they meet, or they’re going to spend money. I think it’s based on this false notion that when a Legislature meets, it spends. We as academics, and you as legislators, have a responsibility to convince the public that the Legislature doesn’t spend money; it watches how the government spends money. That’s an important type of accountability or scrutiny role and I do think we have to convince Ontarians that when the House is sitting, the government is being kept to account, not spending money.

Hydro One was not sent to a legislative committee because I presume (a) the government did not want to do it, but (b) the House didn’t meet until five months after the government announced its intentions to sell Hydro One. I think a larger discussion on that through the committee stage would have been very fruitful before a decision was made.

Obviously there’s got to be some recognition that a government controls what goes out to pre-legislative committees and what doesn’t, but it seems to me that a good rule to follow would be (a) anything that has all-party consent can go to a pre-legislative committee or (b) any major piece of legislation—and you can debate what’s major—that was not part of a government’s explicit election campaign in the previous election, or what the Brits might call their “election manifesto,” any large piece of legislation that was not a major piece of their election campaign. I’m not convinced the public and the Legislature are ill-served by having a kind of early legislative study.

Further, I think a good follow-up rule would be to allow committees, if they’re doing something before the legislation is actually introduced or even after first reading, to draft their own legislation during those hearings and present it. Particularly helpful would be if there was an all-party consensus. I realize that’s probably next to impossible, particularly on major issues, but if there was an early legislative study by a committee, allow them to draft their own legislation and table it.

While I’m on this subject, I’d like to talk just very briefly about standing order 124, which allows the committees to choose and study an issue. You’re aware of it better than I. This was tried in the House of Commons with the McGrath reforms with mixed success. Essentially what happened was that the committees looked at matters they thought were important, and they spent a great deal of time and effort on those issues, often with cross-party support, and they made very thoughtful reports that they tabled. The problem was they were promptly ignored by the minister responsible and the net result was very discouraging. Then they decided, “Let’s get rid of this and we’ll only look at things that the ministries want us to look at because then they might actually be interested in the report.”

I think there’s an alternative and, with no pun intended, sometimes negative connotations can have positive benefits. We didn’t like negative option billing with cable rates where they gave us services unless we said no, but I think negative options on committee reports are not a bad thing. I think that when a committee is charged with investigating a matter or does investigate a matter and reports back to the Legislature, if the report is unanimous, there should be some binding obligation on the part of ministers to respond, and not simply recognize that he or she has received the report, but why they don’t have to implement it. I think you can treat an all-party-supported report as almost first-draft legislation on an issue.

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The issue there is just asking the government to openly say why they do or do not like that, particularly if it has all-party support. In the next few years we may have minority governments. We may or may not—I’m not making any election predictions, please—but I think that’s something worth thinking about.

Moving on, I think the notion of a large number of MPPs required for official party status is wrong and too high. It was 12; I know it was reduced to nine. I was pleased to see it moved down after the last election. But I don’t think this does anything to further debate within committees or within the chamber.

Further to this, I know Graham White was before this committee. He and I have talked about this before. I saw his outline. I didn’t see his comments so I don’t know what he talked about, but he and I have talked about this before. There is a concern of heavy reliance on parties as the organizing principle within Legislatures. After all, this is how men and women get elected but, once you’re in the Legislature, if we can diminish the heavy reliance on parties within the legislative setting that’s not a bad thing. I think one of the ways you can do it is to reduce the number of members needed for official party status.

The whole history of this comes out of the federal House of Commons, when they decided to give increased salaries to members. The federal Board of Internal Economy said, “Let’s make the number 12 for party status,” and then it kind of whittled down. That’s how it came about in Ontario as well, without any debate about, “Why



12?" At the time it was just assumed that no party would go below 12. Well, we've seen both federally and provincially that that is the case.

Why do we have opposition days instead of private member days, beyond private members' bills, I think is a good question. Why is the rotation of questions under the standing orders based on party, I think is a good question. That's something the committee could think about.

On the large matter of confidence: what constitutes confidence and is there any room to increase the role of members of provincial Parliament, the private member, and how is that tied in to confidence? I hope the committee learned a great deal during their trip to the UK about what the UK considers matters of confidence and what are the different degrees of whips. There is a one-line whip, a two-line whip and a three-line whip who are used in the UK. I think those are very important types of things. I would encourage this committee to think long and hard about changing there and, more importantly, the government of the day—whatever government it is; this government or successive governments—about what constitutes confidence. I think governments in Canada use confidence too freely and try to convince members to vote for things that they might not otherwise be inclined to do, using confidence as the lever.

I mentioned Graham White. He and I did a paper some years back, which needs updating now, that looked at provincial elections over a 20-year period. One of the things we were looking at was based on a conversation we had about, "When this government fell, it was interesting that all the cabinet members were re-elected." So we went back and started looking at it. It turns out that across Canada—it needs updating, but the paper was quite neat—when governments fell, by and large the cabinet was OK. It was the private members in the party who lost their seats. So you're no longer Minister of Education, but at least you've still got your seat, or you're no longer Minister of Finance but you still have your seat.

Essentially what we were left with was the notion that the people who pay the price for unpopular policies are not the people who initiated the policies. They are the men and women who voted against them, sometimes probably against their better judgment. It's something worth thinking about, that private members pay the price for policies that are unpopular but they had no hand in framing.

I think we can recognize that some things are simply matters of confidence: election platforms or what the Brits would call election manifestoes; budget items; speeches from the throne. But I don't know what damage is done in simply saying to a government, "We have to vote against this. Our constituents won't go for it. We think it's wrong. But if you"—read "our party"—"lose the vote, we'll immediately turn around and have a vote of confidence in the government and you'll have our vote of confidence." Then we can separate out a piece of legislation from a question of confidence, recognizing there are some things that must be treated as confidence.

I think one of the best governments we've had in Ontario, from a political scientist's perspective, was the 1985 to 1987 government, and not out of any ideological view of my own, but it was just a sense that you knew that for two years some exciting things were going to happen and the government was going to put something forth that it may well lose on. That was kind of neat. It was fun to think that there might actually be some debate about these issues. It might not go anywhere, but at least there has been a public debate about it. Again, my view of the two-year period is not a view that there was great government per se in what the outcomes were, but I think the process was a very healthy process.

This takes time. I don't think it is something that happens easily. I think it's part of the culture in Canadian Legislatures, including the Ontario Legislature. This matter of confidence, some might argue, has almost gained the status of constitutional convention. I don't think that's the case but, quite frankly, I think there is nothing wrong, from the government losing a non-budget vote tomorrow, instead of going to visit our new Lieutenant Governor, in just having a vote of confidence and saying, "Let's get on with matters." That's something this committee could look at, because I think it really would free up members and give them a greater role in that public policy legislation type of job they do.

I have a couple of other very quick comments.

Regulations: I'm not sure whether the way we use regulations falls under what I've described as scrutiny or accountability of legislation. The regulations committee has done a good job, but the tendency over the past decade or so has been to put more and more meat and potatoes into regs and outside of the actual legislation. I really think this is a destructive process. I think the regulations committee should be able to reject regulations outright and, if it does, force the government to bring a vote on the floor.

We could digress briefly here and say the same for private members' bills. I think once private members' bills get out of second reading, we should think about some innovative ways that we can get them back to the House and have a vote on them. Quite frankly, if the government wants to vote against a private member's bill, let it vote against a private member's bill, but there are too many things dying on the order paper that I think deserve a little more openness.

I would encourage this committee to think of some innovative ways to both allow a government to get its agenda through, because I think it's important that it does get its agenda through, but also to allow members to have a full role and say. One such avenue might simply be to force the government to allow its members to vote yes or no on matters in the chamber more often. If the regs committee simply overturns regulations, let the government defend its case in the chamber. I think that's probably not a bad thing.

I'll make a couple of very brief comments on the size of the Ontario Legislature and the drawing of constituencies. Here, in terms of the drawing of consti-



cies, I do have one particularly strong recommendation. I think the Legislature is too small. Again, I've got tenure, so I can go out and say that we need more politicians and it's not tantamount to political suicide. But I do think the Legislature is too small.

I'm a Madisonian. What concerns me is that we're vesting too much authority in too few people. Even for those who distrust power, I think the good solution is to give a whole bunch of people a little bit of power and let them fight it out. They will be spending so much time fighting over who has power that they won't get anything done. That's not a bad thing if you don't like government. I think that notion works.

As I said before, the problem with making a smaller Legislature in Canada, not just Ontario, is that the cabinets are not decreasing in size. So we've got smaller Legislatures, fewer members keeping a bigger cabinet to account and I think that's very destructive. It takes its toll on workload of members. It makes cabinet even more important and powerful. It's harder for private members to keep the government to account, both in government and in opposition. It's harder to work in committees and to be up to date on all the issues of the day because there are fewer people.

The workload issue in constituencies: when the House was shrunk—it was a shrewd political move, I grant that—from 130 to 103, there was a notion that somehow there would be fewer phone calls to MPPs' offices. No, there are just fewer MPPs' offices. The phone calls are the same, they are just being rerouted. So the workload of members, both in the constituency and in Queen's Park, is higher and I think that's destructive.

Beyond that, even if you can't convince the government to dramatically increase the size of the House—and it will go up with the next redistribution—I do think that if you could spend \$2 million wisely, it would be to have your own boundary commissioners. The only people who like the overlapping boundaries that I know of are my colleagues who study elections and now can look at voting trends provincially and federally. The only logic that I can understand is from an academic point of view.

I've talked to federal boundary commissioners about this, the ones who are setting up now. The last thing they are concerned about when they're drawing federal boundaries in Ontario is how many school boards are in a riding. It doesn't make any difference to them. It doesn't make any difference how many district health councils there are, how many regions there are within a riding.

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**Mr Gilles Bisson (Timmins-James Bay):** Now it's how many ridings in a school board.

**Dr Docherty:** Yes.

It makes a huge difference provincially. When we talk about communities of interest, we have to understand that federal communities of interest are very different from provincial communities of interest. The other thing that is disconcerting is that more and more of the federal boundary commissioners are looking at equating population. They're more concerned about the plus or minus 5%, as

opposed to plus or minus 25%, than they are broader communities of interest.

If I could use the riding which I happen to live in, which is Mr Arnott's riding, it's an awfully funny riding. It's a bit of a doughnut with Kitchener-Waterloo in the middle. But I must say, even though I live in the north end of the riding, I've got a lot more in common with constituents way south—I live in a smaller town, Elmira. I've got a lot more in common with people who live in a small community in the south end of the riding than I do with people who live five minutes away in a suburb of Waterloo.

My fear is that when the federal government has its boundary commissions, they're going to be less concerned about those types of issues and they're going to be more inclined to have pie-shaped ridings that include 25% of an urban population that then scoots out and takes in a rural population. Those are the types of things that this House may not think about in improving the role of the private member, but I do think it's important in terms of being able to do the job of representing constituents adequately.

One of the best things you could do, even if we can't convince the government to have a larger House and more MPPs, is to think very long and hard about how those ridings are configured, because I think there are important public policy representation and legislation questions that go along with that.

Those are the end of my formal remarks. I'm more than happy to discuss any and all of those matters with anybody.

**The Chair:** I have two people on the list. Could I just ask you to clarify that final area? When you were talking about there being too few politicians provincially because of now the same ridings as the federal members, are you commenting that the workload of provincial members and the same boundaries is perhaps one thing that needs clarifying? The other thing is, are you saying there are enough federal members for their jurisdictional matters in the existing boundaries?

**Dr Docherty:** Those are two different questions. I'll try to answer the first one.

One of the problems when the chamber was reduced from 130 to 103 was there wasn't a lot of thought going into how this would impact on the day-to-day workload of MPPs. It was more of, "Here's a cheap way to get it done. We've got federal ridings. We can just map these on to it and it's an easy way." In terms of workload of MPPs, that shouldn't be the consideration necessarily on drawing ridings, but I think it should be one of them, because it is a non-partisan issue. I'm not talking about configuring ridings in such a way that makes it easier for some people to get elected, but in terms of the matters that are dealt with in the areas within a provincial jurisdiction I think there's some overlap between that and how ridings are drawn, and that should be a consideration. It wasn't the last time around.

It goes back to the early question about whether MPPs should be paid more. I think part of the problem was it



was a fallout of the fact that you were working a lot harder because you had more people in your ridings. Quite frankly, I'm more than happy to say that MPPs are closer to the people in the sense that the areas under your jurisdiction are more likely to get phone calls from constituents over health, schools, those types of issues, than federal members, with some exceptions. In urban areas immigration is a huge problem that you don't deal with and federal MPs do, but by and large on those kinds of social policy issues you're on the ground a lot more, so thinking about those issues in how ridings are configured is an important workload consideration.

Do I think the federal House of Commons is too small? Yes, it probably should be closer to 500, but I'm allowed to say that. I don't have to go and convince the public of that. My rationale for that, quite frankly—and in Ontario as well with a much larger House—is twofold. There are a couple of considerations. First of all, it would help MPs federally—and if it were a larger House, it would have to be significantly larger in Ontario; I'm not too sure we want to go that route. I think it would encourage people—at the moment, particularly in the smaller House in Ontario, cabinet is a huge brass ring. In the UK, for example, with a much larger House, and if the House of Commons had a much larger House, or even here, MPPs or elected officials would quickly think that they might not have a realistic chance of getting in cabinet and might start to see themselves as parliamentarians. There's nothing wrong with that. I think we've lost the sense that being a parliamentarian is a noble goal. I think it's a very noble thing to do.

So my rationale for a larger House of Commons in Canada is not workload, federally—you asked a question about the federal House. I think that's part of it: allow them to be parliamentarians. Also, I think smaller ridings would allow MPPs and federal MPs to allow themselves to get a personal vote that's independent of their party a little more. The larger the riding, the tougher it is for MPs and MPPs to get known locally. I think they are known locally by a lot of folks, but if they can build up—smaller ridings allow them to distinguish themselves from the party a little bit more. I think that would be helpful.

Finally, a larger Legislature means you can vote against your party a few more times without worrying about losing a vote. One of the beauties of the British House of Commons is that 50 Labour MPs can say, "Sorry, Tony. We can't go with you on this one," but they know they're not going to lose. They don't even have to have a motion of confidence. They can do that, and the bill's still going to pass. We're still a long way from that in Ontario, but I do think that's one of the benefits of thinking about increased size.

**The Chair:** Very interesting. I have Mr Bisson, Mr Tascona and Ms Di Cocco.

**Mr Bisson:** I have a couple of questions. I thought it was an interesting presentation. Your notion of increasing the size of the Legislature was an interesting one, the way you've just now explained it. But I'm still left with the problem that at the end of the day it's not so much the

worry about the loss of confidence that prevents the member from voting against, it's not being able to be the friend of the Premier. Because at the end of the day, that's where all the power is.

How do you get at that one? I think you've answered it. Your answer is to have a larger Legislature, and then I have less of a chance to get in cabinet and I make a decision. That's your whole argument.

**Dr Docherty:** Yes.

**Mr Bisson:** Is there any way, in your mind, to check the power of the Premier—that's where I'm going—because that has a huge influence; and do we want to do that?

**Dr Docherty:** If I had a quick answer for that, either I'm the most brilliant person around—which I don't think I am—or it would have been done before, because someone else would have thought about it, and it would have been implemented somewhere else. I think in some ways it's hard—and I've never been in a caucus, so I don't know what goes on in a caucus. But I do think there's nothing wrong with saying to a Premier, "We just have to vote against you on this one, and if you want to call an election, fine"—and you have to say that within your own party—"but we're more than happy just to go against you and then have a vote of confidence in the government, because we just think this has gotten out of hand."

**Mr Bisson:** I understand that.

**Dr Docherty:** But that's a simple solution. I'm not too sure.

**Mr Bisson:** That notion's not a bad one. It's basically a two-step process: before you lose confidence, there's a loss of confidence against the government. But what I'm asking is that even if you had that in the perfect world, you would still have members not vote against the government because, "Jeez, if I want to get the nod into cabinet, I've got to be on the side of my Premier." So the question is, how do you deal with that?

**Dr Docherty:** I'm not sure, I think is the answer. In Ottawa, what we're finding with the federal Liberals is there are people who are finally speaking out against Chrétien or against the leader, who are putting a check on the leader's power, because they think they're not going to get in cabinet. Unfortunately, it has nothing to do with numbers and has more to do with the fact of whose side they're on. But they probably should have realized two elections ago or an election ago that this was going to be the case.

**Mr Bisson:** They probably realize that because they figure they have just as good a chance, if not better, of winning with the other guy.

**Dr Docherty:** That's right.

**Mr Bisson:** The other question it gets into is that I think part of it is the rules. I have been around this place, both on the government and the opposition sides, and to me it's not a question of just free votes. What happens is, this place is dysfunctional. The rules we have in this Legislature, quite frankly, are not a good—

*Interjection.*



**Mr Bisson:** Well, from somebody who has only sat on the government side, I'll take your groaning as a statement; let me just put it that way.

The reality is we don't have that balance between the power of the opposition to slow the government down and the ability of the government to pass its legislation.

The only way I know to change the rules in the Legislature and make them effective is through a minority Parliament, because then there would be some to-ing and fro-ing on the part of all the players. Is there any suggestion you would make to us on that end if there was not a minority Parliament, on the rules side?

**Dr Docherty:** Sure. Obviously, you'd have to convince the government to do it.

**Mr Bisson:** No, but in an ideal world.  
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**Dr Docherty:** Yes. In an ideal world, I think limiting the number of times you can use closure would be a huge step in the right direction. Sticking assiduously to the number of sitting days—the House is sitting less and less, and I think that's a direct result of governments not wanting to face the Legislature. I think that sticking to a certain number of sitting days and increasing the number of sitting days—people say, “Well, we don't have an agenda.” But the argument I think we could find is that committees can always find an agenda of interesting things to do. So then you increase the number of sitting days, you let committees meet a bit more if there's not a huge legislative agenda, do their own work, but knowing that when they put a report back, if it's a good consensus report, the government has to act on it. Those would be some of the things I would look at.

I think also, and successive governments have done this, that every time the opposition comes up with a unique way to stall legislation, the standing orders are changed the next time around. Every party that is sitting here now has done it, and I think that's been wrong.

**Mr Bisson:** That's why I said that debate in Parliament is the only way I know. I have other questions, but I'm sure there are others who want to ask questions.

**The Chair:** Yes. Can we come back to you, Gilles?  
Mr Tascona.

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** Thank you, Madam Chair. I just have a couple of questions. You indicated about private members having more power in the House, and one way I think you were suggesting is then being able to require votes. As you know, we have private members' business and we have our time. We have a lottery system in terms of when we can get our bill on. Generally what will happen is that you'll have it referred to committee if it's a bill rather than a resolution, but after that there really isn't any power other than the power of persuasion between the House leaders. I guess one way of doing this, unless you think there are other ways, is requiring votes on private members' bills. Any thoughts on that?

**Dr Docherty:** Yes. I agree. It's a tough one, because if you say a bill goes out to a committee and then it has to be reported back and voted on by the end of the session,

the fear then is that bills will just be voted against on second reading. But I do think, once a bill gets to a committee, that it should be reported back to the House, and if a committee makes a report, there should be a vote. Private members' business should not be allowed to die on the order paper after a committee has dealt with it. I think it's a sign that a committee thinks this is an important thing to go back to the House. I think we can treat it differently from the government's legislation because with the government's legislation they can decide if they want to proceed.

**Mr Tascona:** What kind of vote would you consider would be—any kind of threshold vote, or what would you see?

**Dr Docherty:** There are different ways you could look at that. You could look at two thirds, but it might depend. You could say whether it's two parties, but I don't like the notion of having two parties, because I think there's too much emphasis on parties now. If a committee reports on a bill and it passes through the committee, even if it's a bare majority, then it should get reported back to the House. Let the Legislature decide whether it deserves consensus, or defeat it or pass it on a bare majority. Just treat it the same way you would treat a vote on the floor of the chamber, which is, if you've got 50% plus one, then you're fine.

**Mr Tascona:** OK. The next area I want to cover: you seem to suggest that the solution to the increased workload with respect to MPPs' legislative work and also their constituency work is to increase the number of MPPs. Have you got any other solutions besides just increasing the number of MPPs, considering what we're dealing with as the current situation?

**Dr Docherty:** Sure. One possible way is to increase the size of MPPs' staff who would help with constituency matters. I'm not too sure that's the best way, though, because I think there are other benefits to having a larger chamber or more MPPs. I think workload is just one of those issues. You can always deal with workload simply by hiring more staff or hiring more researchers.

**Mr Tascona:** We do have limitations in the budget, now that we have global budgets.

**Dr Docherty:** Yes. The Board of Internal Economy could raise those to meet the increased demands if—

**Mr Tascona:** If they ever met; that's right. But there's one other solution they've had in England, and it is because of the importance they want to put on constituency work: overtime pay. They have an overtime pay allotment for MPPs. Are you aware of that?

**Dr Docherty:** Yes. I've talked to some British members about it. I'm not convinced that's the route to go. Britain has a lot of useful models. There are a lot of good things to be said about their system. First of all, British members aren't paid—

**Mr Tascona:** They just recently did that, about a year ago.

**Dr Docherty:** They're not paid the same as legislators in Canada in terms of corresponding salaries, so a lot of



British members have part-time jobs already, outside their own legislative responsibilities.

**Mr Ted Arnott (Waterloo-Wellington):** They're well paid; it's just that it's very expensive to live there.

**Dr Docherty:** Yes. So I think it's a slightly different kind of beast that way. I'm not convinced overtime pay—listen, I'm aware of your workload, having been an intern and spent some time around here. If you got paid time and a half, I think it would just be cheaper to double your salary right now. For a 40-hour work week, I think it would just be easier to give you a huge—

**Mr Tascona:** For the record, I'm not advocating that. I'm just putting that out there. When you talk about constituency workload—and I think it's a frank statement—that is a heavy workload because of the decreased number of members and just basically the volume and the types of issues you deal with because you're closer to the people in terms of the issues. You suggested increasing the number of MPPs; you've also suggested getting more staff. That would obviously mean affecting your global budget.

**Dr Docherty:** That's right.

**Mr Tascona:** If you have any other thoughts on that, feel free.

**Dr Docherty:** No.

**Mr Tascona:** OK, thanks.

**Ms Di Cocco:** I was interested in your comments about the function of the private member. You talked about the legislative function and you talked about representation and scrutiny and accountability. Your comment on representation was that it's very good and you feel that that role is done really well, and also that the Legislature allowing the government to function also works. In a majority government it works because the government is going to do what it needs to do in spite of the Legislature, so to speak.

The scrutiny and accountability function: what is your perspective when it comes to actual ability in that vein? That's one point, and I'll stop there. I have a couple of other questions. What's your view about the scrutiny and accountability function in the provincial Legislature in Ontario?

**Dr Docherty:** I think that's an area—and I've tried to cover this, but I can talk a bit more about it—where there could be improvement. I think part of the problem is it's hard to keep a government accountable when you're not here asking them questions in question period. It's hard to keep a government accountable when bills aren't getting sent out to committee or are not spending as much time in committee. I think it's hard to keep scrutiny on the government when ministers aren't around or when members are split between different committees and subbing in etc and moving back and forth because there simply aren't enough members in the Legislature. Those are the areas where accountability and scrutiny could increase. I sound like a broken record, but when the cabinet is staying the same size in Ontario—it only decreased by a couple of people, but the MPPs are decreasing more; the ratio went from, I think 1.4—

**Ms Di Cocco:** Yes, I've got the numbers.

**Dr Docherty:** Yes, I've got a paper. Anyway, four MPPs for every one cabinet minister—now it's three or something. It becomes very difficult. And that's not a problem unique to Ontario. I think that scrutiny and accountability function is very tough. One thing Ontario does well, that I don't want to see changed, is that our question period provides a good sense of accountability and a good sense of scrutiny—and it's long. It's longer than most question periods in the country and it gets a lot of things done. I think quicker questions and more questions would be better, but we're moving in the right direction.

One thing is—this is not something this committee can deal with—when I was an intern in 1984, the press gallery had a columnist and a reporter from the Windsor Star; the K-W Record had somebody here; the London Free Press had somebody here. I think MPPs should be calling their local papers saying, "Why aren't you sending people down here more often to cover important matters?" Chris Waddell is at Carleton University and I know he's doing a study right now. He's trying to tie in the decreased voter turnout in different elections to the decreased number of reporters. I'm not too sure that answers everything, but I think it does have an impact.

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Using the media as part of the scrutiny and accountability function is a proper function of our democratic process and has always been. This is not something new, but it's becoming tougher when there is one story coming out, going to different papers across the province. I think that's a really sad thing. It decreases public discourse in politics. It also doesn't allow private members to develop a relationship with people who are here but also to understand the problems back home for the papers they report for. I think that decreases the amount of dialogue back home, and I think that is very detrimental to the scrutiny and accountability function.

**Ms Di Cocco:** I can't agree with you more on that one. That's actually an interesting point you raise, especially for the members from the hinterland, I call it, Sarnia-Lambton and other areas, because the focus here seems—

**Mr Bisson:** I call that urban.

**Ms Di Cocco:** That's true. It focuses on the national papers etc. Thank you for that response.

There's one other area that constantly concerns me here. I feel the spectrum has gone to an extreme. Even in the discussions we're having in this committee, it's slowly going to evolve, I think, a little bit more to a different culture about this fear of critiquing, of criticizing legislation as a private member because it infers disloyalty to something. That, to me, is a perception. It's not really real, but it's a culture that's evolved with new members or as things change and also with the public becoming so disenchanted. I have a sense that members themselves are starting to say, "Wait a minute. Our voices have to be stronger." It's the cultural change.

Do you see from your perch any real—how do I say it?—will in the jurisdictions in Canada—I won't go into



the federal level but in the provincial Legislatures—that there is an actual movement that may change this culture of, if you want to call it, fear of critiquing your own party without getting reprimanded or whatever the word is, “disciplined” as they say?

**Dr Docherty:** I said at the start I'd keep my comments restricted to legislative things. I think Mr Bisson said it. Without a minority government, this can be very difficult because in a minority government you can criticize your leader and what are they going to do? They not only need your vote, they need other people's votes too.

Then the question becomes, how do you encourage minority governments? That's very difficult. PR would obviously do that. I'm not necessarily an advocate of PR, but I do think it would help, among other things, promote minority governments. If there's a problem with PR, it's a people thing. It'll solve all kinds of issues. I don't think it necessarily will, but I do think it will help create minority governments, and that would be a good thing. The alternative to that, if people don't want to move in that direction, is perhaps the alternative vote system in the Australian model. Although Australia does have a high degree of party discipline, in Australia you rank your candidates—

**Ms Di Cocco:** Proportion—

**Dr Docherty:** It's not proportion. It's not PR, but you rank the candidates 1, 2, 3, 4, 5, and you have to have 50% of the vote to win. So the last-place candidate's knocked out. This all happens on the same ballot so that results are just as instantaneous. Then you rank your ballot, so the last person gets knocked out, and where does our second-choice vote go? It creates some strategic voting, but someone gets elected when they have 50% plus one other vote. Again, it's a cultural issue, as you identified. You're absolutely correct. It would take a while, but I suspect some members might think they've got a bit more strength saying, “I represent 50% plus of my constituents, not 35%, 36% or 40% of my constituents, and I'm not afraid to say” what they feel on a particular issue. That's not a bad thing to look at as well.

In terms of other jurisdictions in Canada, the only one that's really going in that direction at the moment I suspect is Saskatchewan. It's partially a product of a minority government, a coalition government, the need to be more responsive because they need the votes.

**Ms Di Cocco:** If I could have your indulgence, Chair, for one more question.

**The Chair:** We've got two other people on the list.

**Ms Di Cocco:** Just one quick question on regulations.

**The Chair:** OK.

**Ms Di Cocco:** One of the things I've noticed—and I also asked this of Graham White—is what I looked up as Henry VIII clauses that you put into regulations and you really dramatically change the intent of the legislation. Do you have any comments on that?

**Dr Docherty:** No, I don't. I'm aware of it, but I'm not an expert in that area and I'd be very nervous that I would say something that might be misleading or incorrect.

**Ms Di Cocco:** OK. Thank you.

**Mr Arnott:** Thank you very much, Professor Docherty, for coming. I've really been interested in what you've had to say. It was good to talk to you on the telephone and I'm very pleased that you've had the opportunity to come down and make some time for us.

You indicated that five provinces have downsized their Legislatures. I wasn't aware of that, and you may not be aware of this. I spoke to Warren Bailie, who was the chief elections officer at the time we were considering downsizing the Legislature, and he told me that we were due for a redistribution anyway in Ontario because sufficient time had lapsed. The census and all that had happened. Under the old way of doing things, we would have gone up to 151 seats, and instead we went down to 103. In that context, it's an even more significant downsizing than most people realize.

**Dr Docherty:** Presumably you could have changed the legislation to keep it at 130 or grow to 140 or 135.

**Mr Arnott:** Oh, sure.

**Dr Docherty:** I wasn't aware of that, but if I think about it in terms of the 1981 census versus the 1991 census, that probably would make sense.

**Mr Arnott:** It is certainly an issue for us as members trying to represent our constituents, but then again going back to a historical example, my first riding had about 60,000 people in Wellington in 1990. The riding of my immediate predecessor, Jack Johnson, was 90,000 people in 1975. His riding was called Wellington-Dufferin-Peel. My new riding of Waterloo-Wellington has something in excess of 100,000 people.

**Dr Docherty:** Part of that is a problem in that area, Wellington-Dufferin-Peel. It was just the huge growth in Peel that sparked that increase. That's part of the problem with using a census every 10 years.

**Mr Arnott:** But it does impact on constituency office caseload. I would suggest to you that there are two other factors perhaps that you're overlooking in terms of the volume of problems that come into a constituency office, and one is incumbency. If you've been there for a while, people tend to know you. If they know you, you're first in their minds when they have a problem and they're more inclined to call, I would suggest. That's been my experience.

The other factor is perhaps less well known, but I think to some degree it's the popular perception of the extent to which you care and the extent to which you can solve their problem, because if the popular perception in a member's riding is they don't care and they're not inclined to even return the call, I would suggest that member's constituency office probably isn't as busy as a member who has a reputation for going to bat for their constituents. The more you go to bat for your constituents, the more they come and call. That has an impact on the workload. I believe that's the case anyway, based on what we've seen in Wellington.

**Dr Docherty:** If I could add to that, with all due respect to all the members here, I would say that your constituency staff, if they're very good, also quadruples



your workload because I suspect there are a lot of people who say, "I'm not going to bother to call Ted Arnott, but I know when I phone the office, I'm going to get the result. He may never see my problem, but I'm going to get it solved anyway." If that reputation gets around, then that also increases the workload.

**Mr Arnott:** You were talking about career aspirations of MPPs. Gilles was saying something about a member in their thought process, whether they're going to defy their party and what impact that's going to have in terms of their career aspirations perhaps. Not all MPPs aspire to be in cabinet.

**Mr Bisson:** But most do.

**Mr Arnott:** Most do, but not all. That's something, again, that people don't realize. I think the popular perception is we're all down here trying to climb the greasy pole to get to the top, but all members don't aspire to get into cabinet.

**Dr Docherty:** I would argue not enough don't aspire to cabinet. That's why I think we should have a bigger House, so that more would see themselves as parliamentarians. Some people have said in the past that one of the things you could do is get rid of the additional salary for cabinet ministers because that would reduce the inducement to do it.

**Mr Arnott:** I just did a quick list here of some members, one from each party: Donald MacDonald served here for how many years?—30 years or thereabouts—never served on the executive council but had a very distinguished parliamentary career. I think of Harry Worton, who was here for 30 years, I know for a fact, from 1955 to 1985. He was a Liberal member and served in opposition for 30 years. Of course, the irony is, when he didn't run again, the Liberals ended up in government shortly after the election. My predecessor, as I said, Jack Johnson, served here with distinction for 15 years and never served on the executive council. So I often think of those people.

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I think you're absolutely right. There is an opportunity for members to see themselves as privileged parliamentarians, and that's the most important thing in terms of how they approach their work and what they try to achieve down here.

The other thing you talked about was the issue of confidence. I've been telling a few of my colleagues a story over the last number of years. I was in Great Britain on a holiday in the summer of 1993. During that time, John Major's government was faced with an important issue. I forget exactly the technical details but it involved a motion on the place of Britain in Europe in terms of the European Union. Major's government was trying to move toward greater integration, but he had a big block of reluctant Tory MPs who couldn't accept it. So in an attempt to win the vote on the motion, he declared that the issue was going to be a confidence motion, hoping that would force these guys to vote in favour of the motion. They didn't and he lost the motion, having declared publicly that it was a confidence motion. So the

government was in crisis for 24 hours. The press, of course, went hyper, into overdrive: would there be an election or would there not be? He solved it very simply by bringing in a simple motion the very next day saying that the House had confidence in the government. The same people who had voted against the motion the day before voted in favour of it, because they didn't want an election. What I'm suggesting is there already is that mechanism. It's a very recent parliamentary precedent.

**Dr Docherty:** I agree. I don't disagree at all. I just think it should be used here and could be used here.

**Mr Arnott:** It could be used here.

**Dr Docherty:** Yes. But members of the governing party have to vote against their government before that's used.

**Mr Arnott:** They have to understand that that mechanism exists before they would even contemplate it, but it certainly does.

Last, I agree completely that more issues need to be sent to committee before the government takes a position at second reading. The new mechanism that the standing orders have that has been used on a couple of issues, I think, has been used to very positive effect for the people of the province. The committee hearings have been more meaningful. I think it's fair to say the opposition members have felt they've had a greater degree of say, which I think is important too, because they're elected and we need to recognize their legitimacy as elected representatives more. Having served in opposition, I know what it's like, and I would submit to you that we need to involve the opposition more on significant issues. I think that mechanism we have within the standing orders to allow bills to go to committee after first reading is a good one and should be employed more.

Thank you for your comments.

**The Chair:** I have Mr Dwight Duncan, Julia Munro and Gilles. None of these people have spoken before.

**Mr Dwight Duncan (Windsor-St Clair):** Thank you, professor. I apologize for being late for your presentation.

I think it's probably fair to say the pendulum in terms of the role of private members has swung one way. But as you know, in the history of parliaments, parties evolved because, otherwise, things just didn't get done.

I do take one exception. I was here in 1985-87, and I was part of the negotiations. That was the most dictated-to Parliament we've ever had. It was done by an accord. The votes were very carefully whipped and the negotiations on the accord were all done in private.

There are also academic studies that have shown very clearly that minority parliaments actually produce a lot less in terms of legislative output than do majority parliaments, for obvious reasons.

**Mr Bisson:** Probably not a bad thing.

**Mr Duncan:** Well, it can and can't be. The popular perception is you get a lot more done with a minority government, but the reality is that much less gets done and a lot more goes on behind closed doors in terms of negotiations.



Margaret, I think you were here in that period. Members felt much more isolated then than one would expect, because so much of that negotiation happened behind closed doors. In the case of that particular minority Parliament, it wasn't unusual for ministers to meet privately with the leaders of the other parties. In this case, it was the leader of the New Democratic Party. It happened quite frequently, without the knowledge of the government's members and, frankly, a number of the opposition's members. So I think we have to be careful.

I wanted to explore a couple of issues with you around committees. Britain's looking at actually—we've now got the clause, and we agreed to this, by the way, in 1999. That year, 1999, was the first time, by the way, the three parties had agreed to rule changes in some time and we, through a process of negotiation, came up with it. Nobody got everything and everybody got something. We brought forward the concept of bills to committee after first reading and it has been used appropriately by this government. As you know, the federal government has that power and hasn't used it appropriately. They've used it as a form of time allocation.

British Secretary Cook, I believe it is, has proposed that government send ideas out to committee even before introduction of first reading, ie notionally to consider an idea. Is that what you were talking about when you talked about how to do it?

**Dr Docherty:** When I talked about pre-legislative scrutiny, that was exactly it. Here it's one stage first. The bill is introduced in first reading and then sent out. There you can send it out beforehand. When I was talking about perhaps committees drafting their legislation, it would be done in that light, in kind of a pre-legislative scrutiny light.

**Mr Duncan:** I'd like to relate an anecdote to the professor and other members of the committee. You were talking about a shortened question period. That was part of the negotiations in 1999 and I think all three caucuses looked at it. One of the things I did in those discussions was to call Dalton Camp, who of course had authored the Camp commission, which led to what is essentially our legislative day to this day, and it was done in a minority Parliament. In any event, we reviewed a number of the proposed changes and I went to him and spoke to him and asked, "Why would you think a government would want to shorten question period?" The idea was that with shortened question periods, shorter questions would allow more questions, not unlike the federal House. There was a very long pause and he broke the pause by saying, "No doubt, to save money." That idea was rejected.

The other observation I have—and I don't know how other members feel, particularly those who travelled to Britain. We actually have, in my view—I was quite surprised at how advanced this Legislature is, despite its problems, despite the 77 standing order changes since 1997, at just how much more opportunity members really do have here to participate, to question and to scrutinize. I was quite astounded in Britain at the lack of opportu-

ity. I haven't had a chance to look at Australia or other jurisdictions closely, but I was quite astounded by that and quite pleasantly surprised.

**Mr Bisson:** Do they have a question period in Great Britain?

**Mr Duncan:** Yes, they have it, but the questions are given in advance, they only get the Prime Minister for, I think it's half an hour a week right now, and members don't even have seats in the House.

**The Chair:** You submit your questions two weeks in advance to the Prime Minister.

**Mr Duncan:** Yes. It's really not nearly, in my view, as functional as ours. Observations? You've had a chance to look at other Legislatures.

**Dr Docherty:** When I began, I said I thought there were some things we do very well here in Ontario, and committees were one of the things I pointed to. Not just compared to, say, the UK, but I think compared to other Legislatures in Canada, our committee system here does a very good job.

**Mr Duncan:** Have you looked at it recently? I don't share that view. I think we do things well in the House. I don't know how other members feel. I was very struck by the British committee system and the opportunity members have there, first of all, to gain expertise—and that's one of the more compelling arguments, in my view, for more members, by the way.

**Dr Docherty:** No, I agree with that. I'm thinking in terms of other jurisdictions in Canada. Alberta doesn't have a committee system, to begin with, and the idea of travelling and hearing from people just doesn't make any sense to them.

The other thing Alberta does a little bit, which I haven't touched on here but we might as well, is this notion that somehow they can have cabinet committees that include government private members. I don't think that's a good thing. I think that if private members are supposed to scrutinize and hold the government to account, we should separate committees and there should be distinct cabinet committees and legislative committees.

**Mr Bisson:** We do that here, don't we?

**Dr Docherty:** We do, yes. I'm not hugely in favour of Alberta's way because I think it serves to circumvent the role of private members per se as a group or as a cohort. I think they do it to a much greater degree in Alberta and I'm not convinced it actually works. In Alberta, of course, you have huge one-party dominance. British Columbia is looking at doing much the same thing right now, partially as a function of the size of the government caucus there.

1640

**Mrs Julia Munro (York North):** I want to apologize for the fact that I had to keep running in and out. I want to respond to a couple of points you made and frankly see what sort of response you have to some of the concerns I have.

We hear a great deal about the question of independent votes. On the surface I agree, because as an in-



dividual member I understand that obviously I have an opinion, and therefore there's merit to this. But I wonder, in the context of government bills that generally reflect a great deal of expertise and legislative groundwork and things like that, how real is that opportunity, in your view, to have "independent votes"?

When I look at some of the time that has gone into certain pieces of legislation—that's not the only gauge of its merit, but obviously a great many people have been involved in the creation of a particular piece of legislation. Does an individual member really have the expertise and the time and all those kinds of things? You can be fundamentally opposed to it in principle, that's different, but I'm thinking in terms of the practical nature of much that we would be asked to vote on.

**Dr Docherty:** We can't assume that just because a member of a governing party votes in favour of legislation, they're doing it against their best wishes. Sometimes they actually agree with it. We have to recognize that's probably the case, particularly on things that have been talked about during an election so that it's part of an election platform.

In terms of expertise, that's a tough call. I think that in the past we've been too willing in Canada to restrict what becomes a free vote to those so-called matters of conscience, and then it becomes easy to relegate only matters of conscience to independent votes. I think that's problematic. I think we should have a bit freer understanding.

In terms of technical expertise, yes, I think it's fair enough to say that oftentimes—this is a problem for members—you might be against something, but once it's explained it to you and you're given all the information, then you understand why. You might not be able to explain it to your constituents because you can't sit down with them in a room for an hour. I think that's a difficult issue. Certainly in my interviews with federal members of Parliament that has come up on a number of issues. That's fair enough; I understand that. But I do think there seems to be, true or false, too much of a sense that if you vote against your party, even for the best of reasons, you're going to pay the price. I think that's worse than the other alternative.

**Mrs Munro:** I appreciate your comments because I certainly understand that element of perception. I see an opportunity. Reference was made a moment ago to the whole notion of committees meeting and having hearings prior to second reading. It seems to me that when you look at the committee system, there is an opportunity there where issues around amendments and things like that might be the kinds of areas where you would be able to put forward, or vote against or whatever, because of the fact that that's a very specific thing and not the bill in principle and so forth.

The other thing I heard you commenting on was the problem we face with the reduction in the media. While not suggesting that it's not my fault and therefore it's the media's fault, at the same time, do you have any comments or suggestions? Personally, I feel our role is not well served by the media because they tend to have a

provincial focus, a leader focus, whether you're talking about issues of a federal nature or a provincial nature. Any comments about what, as individual members, we can do or should do, or pressure to be put? I think it's a very serious one. They're not interested unless it's the one voice.

**Dr Docherty:** The problem is exacerbated when you have fewer media, because they can only cover one story and that story is going to be of provincial importance and not of regional importance, so I think the fact that we're losing our regional reporters from Queen's Park exacerbates that problem. I'm not too sure what you can do. You certainly can't force newspapers to—

**Mrs Munro:** No.

**Dr Docherty:** I don't know. Other than encouraging your local papers to send a reporter down for a week or something like that to see what actually goes on and report on issues, I'm not too sure what else can be served. They're obviously going to be reluctant, thinking, "This is just going to be a fluff piece. They just want us to write these wonderful things about Julia Munro." But I think that encouraging local reporters to understand what goes on here can only be of long-term benefit to understanding.

For example, I suspect a lot of local reporters don't understand how members from different parties get along in committee; they don't in the chamber. I think the Legislature generally would be well served by that message getting out by so-called independent people and not just by MPPs going back and saying, "You know, a lot of work gets done in committee outside the glare of the lights and we do constructive things." If reporters could see that more often—I think it's sad that there are no reporters here, not that they're not hearing me, but I think committee work should be covered more and it's not going to be covered when there are few reporters in the press gallery already. When I was here as an intern years ago—

*Interjection.*

**Dr Docherty:** Yes, Eric Dowd used to just hang out. You'd see him pop into different committees.

*Interjection.*

**Dr Docherty:** That was a very helpful thing. Encouraging local papers to somehow find ways to bring people down for these issues to get a sense of how this place operates would go a long way, not necessarily to restoring the role of the private member, but certainly to helping restore the confidence people have in a Legislature as being something more than a wrestling ring. I think that would be a good thing.

**Mr Bisson:** Let me disagree with you and shock some of the members. I quite frankly don't buy this free vote concept. I'm just thinking back. You've been here, Margaret, longer than all of us. You've sat in government and in opposition. Ted has been here on both sides of the House. Of all the times I've stood up to vote on something, how often have I really got up and said, "I really don't want to vote this way. It's my party making me do it?"



The reality is we all come here with a certain ideology. When I was in government, and I was in government for five years, sure, we passed controversial legislation. Your government in seven years has passed controversial legislation. But I'd be willing to guess most of your members agreed with it, as our members agreed with it. So this concept that free votes are the answer I don't see as the issue.

I'm thinking, what were the tough ones for me? I had some tough votes—the social contract. Would I vote for it again? Yes, I would in a heartbeat because I believed at the time it was the best thing to do. You guys had the amalgamation of the municipalities. Your ideology told you that's what you wanted to do.

**Mr Arnott:** Practical reality.

**Mr Bisson:** No, but I'm saying, from your perspective—we're all honourable members, right? Most of us actually do get along, contrary to what most people believe, not only in committee but in the House. There's hardly anybody in your caucus that I don't believe would go into the House—I can't think of too many people other than what's-his-name who resigned.

**Mrs Munro:** Toni.

**Mr Bisson:** Toni was really opposed to the amalgamation bill. I'm just saying, it's not a free vote thing. What's more interesting in your concept is how many members are here, which is an interesting concept. But the other issue is that of minority Parliaments. The only way you're going to get a diversity of views, I think, and that to-ing and fro-ing you talk about, is to have a system where you don't have a lot of majorities, either through a PR system or through a fluke of elections, in having a whole bunch of political parties in our current system that would possibly prevent majority governments from being formed. Because this is an old boys' club, right? It's basically three-party based, which is really only two-party based at any one time, and you always end up with majority governments. So when we're up, one of you guys is down, and when you're up, we're down. The reality is there's not a multitude of parties out there to arrange the seats in such a way as to make a minority.

1650

So I kind of reject the free vote thing. I'm trying to think of one time I got up in this House where I said, "Oh, God, my whip and my leader are telling me to vote this way." Do you know what it was? Bloody pensions. And I was in opposition. The only time I got up in this House and voted against my conscience and my own good sense was when we did away with our supposed gold-plated pensions. That's the only vote that I can remember—

**The Chair:** You voted—

**Mr Bisson:** I voted with you guys. And I bet a bunch of you felt as I did. That's probably the only one I can think of.

**The Chair:** Well, we've sure thought about it since.

**Mr Bisson:** No, but I make my point with members who have been around, because the reality is that we all come to this Legislature as honourable members to repre-

sent our ridings to the best of our ability, but each of us with an ideology. Why you are a Conservative is because you are a conservative, and I'm a New Democrat, a social democrat, because I'm from the left. I'm a social democrat; this is what I believe in. So that's why the PR thing has always had an appeal to me.

I heard your comment earlier, saying it's not a be-all and end-all. I think it probably is, more than we're willing to admit, because as I talk to parliamentarians around the world through l'APF and different things that I've done, those systems—and I think the best one I've seen is what they've got in—I always get it mixed up—Switzerland. I always want to call Sweden Switzerland. They really have a system over there that has evolved over a period of time that actually works. Quite frankly, they don't end up with huge majority governments in that system. So I think PR is more the thing.

On the issue of committee, I'm intrigued by the idea of sending stuff to committee prior to it ever hitting the House. The reason for that is that it doesn't entrench us all in our positions as we go into the bill. We've somewhat done that with nutrient management and a few others by allowing them to come out after first. But I like better the idea of sending them in before so that, for example, if we say there's a social policy issue we need to deal with, and the social policy issue is—I don't know—health, whatever; then basically you refer the issue to a committee and allow the committee to look at it and come up with some ideas. But in that process, there can't be a majority. The problem is that if it's my majority, it will be my view, and if it's your majority, it's going to be your view. You have to have some mechanism where you don't always have majorities deciding these public policy issues, because the reality is, you guys got 44%, we got 38% or 36% of the vote, and you got a majority of seats. So it's your majority view that rules, even though you don't have a clear majority from the population itself. That's basically the point I wanted to make. I'd like to hear what you have to say to that.

**Dr Docherty:** Not too much, although I have a colleague who says he doesn't trust anybody complimenting him until they've insulted him first because then he knows the compliment is real. I think the same holds true: until you vote against your party, nobody believes you agree with them when you're voting for them. So it's harder to tell people, "Yes, I really believe this," until they've seen some proof that you voted against it. Not to say that you should just pick an issue to vote against your party, but just to say I understand your dilemma that, yes, you do agree more often than not, a majority of times. But there certainly is, I think, a well-grounded view in the public that members don't stress their independence inside the chamber when it comes to voting.

**Mr Bisson:** Because sometimes, as members of the public, you have a very simple view of how this place really works. I'm not saying they're stupid; they're probably more intelligent than we are, in some ways. But there is a reality to this place, and you come to this place with your ideology. That's what my point is.

**Ms Di Cocco:** Just quickly on these last points with regard to talking about ideology, if you want, or the critical thought or independent thought when one is debating legislation: I come to this place, I guess, not with an ideology but with a philosophy of what I believe is a prudent or thoughtful approach to representing my constituents. That means there are going to be times when the interests and the needs that I perceive or that I feel my constituents are asking me to adhere to do not necessarily fit into that ideology, because I don't believe that's good democracy. It's like a religion, and I don't believe that. I think there are fundamental principles you believe in. I guess I'm going to agree to disagree on that thought.

**Mr Bisson:** And my line is, that's why you're a Liberal.

**Ms Di Cocco:** Maybe that's right. Maybe that's why I'm at the centre, because I believe I can actually think independently or critically.

One of the things that intrigues me with this whole process we're talking about is a better democracy. It's the flexibility that's not there. Whether or not we choose to vote 99% with what's been presented as, "This is the path," the flexibility doesn't exist, in my opinion. It doesn't exist because there's that sense that if one stands up independently, then there is division, and thou shalt not show division, because division means weakness. I can go on and on. In my opinion, that's all a façade to create the sense of strength.

That's just my comment on that perspective. I don't know if you want to add anything to that.

**Mr Bisson:** I think the healthiest thing we've seen in Ottawa is the division we're now seeing in the Liberal caucus. I don't mean that partisan-wise. It's actually nice to see them disagreeing with each other for a change.

**Ms Di Cocco:** They're disagreeing—

**The Chair:** I think Carolyn did ask Professor Docherty—

**Dr Docherty:** I've got no comment on that. That's fine. It's an interesting point.

**The Chair:** But you don't have a comment on it.

**Mr Bisson:** I need to get to the House for 5 o'clock. I don't mean to run away.

**The Chair:** OK.

**Mr Bisson:** I understand you're doing the report, of which I was no part; you're doing a section of the report.

**The Chair:** Yes, but I certainly wasn't going to interrupt this interesting exchange.

**Mr Bisson:** No, that's fine. It's very interesting.

**The Chair:** Is that everyone?

**Mr Bisson:** It's nice to have your brain cells stimulated.

**The Chair:** Simply in closing, Professor Docherty, it must have become very apparent to you how much our members enjoyed your being here today, because you certainly generated some of the best discussions that we've had, and interesting viewpoints. It's been one of those sessions for me, because I do have the history since 1985, where it has been extremely difficult for me to sit here as Chair and try to behave like a Chair when I really want to be out there being part of the discussion and questions. Again, thank you very much for coming. It's been very stimulating to listen to. I would like to say a whole lot of things, but I'm going to behave as a Chair should and just thank you.

**Dr Docherty:** Thank you very much. I certainly enjoyed coming here and I appreciate your comments and thoughts as well.

**Mr Tascona:** Madam Chair, are we going to proceed to part 2?

**The Chair:** We will move to the closed session of the committee now and proceed with our discussion of the draft report.

*The committee continued in closed session at 1659.*











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# Legislative Assembly of Ontario

Third Session, 37<sup>th</sup> Parliament

# Assemblée législative de l'Ontario

Troisième session, 37<sup>e</sup> législature

## Official Report of Debates (Hansard)

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## Journal des débats (Hansard)

Jeudi 21 novembre 2002

### Standing committee on the Legislative Assembly

Firefighters' Memorial Act, 2002

### Comité permanent de l'Assemblée législative

Loi de 2002  
sur le monument commémoratif  
en hommage aux pompiers



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Thursday 21 November 2002

Jeudi 21 novembre 2002

*The committee met at 1533 in committee room 1.*FIREFIGHTERS' MEMORIAL ACT, 2002  
LOI DE 2002  
SUR LE MONUMENT COMMÉMORATIF  
EN HOMMAGE AUX POMPIERS

Consideration of Bill 113, An Act to honour firefighters who have died in the line of duty / Projet de loi 113, Loi visant à rendre hommage aux pompiers décédés dans l'exercice de leurs fonctions.

**The Chair (Mrs Margaret Marland):** I'd like to call this meeting of the standing committee of the Legislative Assembly to order. Today we are dealing with Bill 113, An Act to honour firefighters who have died in the line of duty. It stands in the name of Mr Wood. I believe, Mr Wood, you wished to speak about the amendments you had tabled with the clerk.

**Mr Bob Wood (London West):** Yes, I do wish to speak on that. What I'd like to do is withdraw the amendments.

**The Chair:** There were no amendments received other than the three from Mr Wood. He's now withdrawn those three amendments, so we would like to proceed with our deputations.

## RON GORRIE

**The Chair:** The first presenter, representing the Ontario Professional Fire Fighters Association, is Mr Ron Gorrie, the executive vice-president. Welcome, Mr Gorrie, to the committee. You may proceed. There is a 15-minute presentation time; if you wish, you may leave time for the members to ask you questions or you are entirely free to use the time to your own purposes.

**Mr Ron Gorrie:** Thank you, Madam Chair. I'm sure I'll be finished well in advance of 15 minutes, and I hope the members only ask nice questions for the remaining time.

On behalf of the 9,000 professional firefighters in the province of Ontario, I'm honoured to make this presentation speaking in favour of Bill 113, An Act to honour firefighters who have died in the line of duty. My name is Ron Gorrie, and I'm proud to have been elected to the position of executive vice-president of the Ontario Professional Fire Fighters Association in June of this year. I have also been appointed by President Fred

LeBlanc to act as the OPFFA representative on the steering committee for the memorial.

Just recently, on November 11, we all bowed our heads in memory of the fallen members of the armed forces. A majority of us participated in Remembrance Day services at memorials erected in memory of fallen members of our communities or watched these same services on television. The construction of memorials to the fallen heroes of armed conflict was done to preserve their memory and also to provide places of remembrance.

Bill 113 will provide funding for construction of a centrally located memorial at Queen's Park to honour firefighters who have made the ultimate sacrifice to their community. It is an appropriate memorial for a great many reasons.

**Location:** an existing memorial constructed on the grounds of the Ontario Fire College at Gravenhurst is not readily accessible to the general public. A new location at Queen's Park will allow for free access and encourage the public to contemplate sacrifices made. By being near subway lines and major traffic routes, perhaps the firefighters' memorial can become a meeting place and take on the atmosphere of most fire stations across our province, namely, a place of community and friendship.

**History:** a true link to past heroes will be established with the inscription of the names of firefighters killed in the line of duty since the establishment of the province of Ontario. The sacrifices made will be honoured and recognized.

**Finally, the future:** the memorial can become a focal point with respect to public safety. Students on firefighter memorial Sunday will have a concrete symbol to use during discussions and thought on the hazards facing them every day. Their own futures may be protected by the lessons learned and future thoughts and attitudes may be nurtured while thinking of the dedication of those honoured on the memorial's walls.

While I am certain we will all pray that no more brave persons perish while serving the community, I know that those I am proud to call sister and brother will continue to give up their lives in service to the citizens of this province. Thus it is fitting that at the centre of our government, a proper and public memorial is erected to honour these sacrifices.

This memorial will have a definite personal meaning to me, as on the walls will be the names of a number of

close friends, one of whom actually died in my arms while attempting to rescue a trapped citizen.

On behalf of the members of the Ontario Professional Fire Fighters Association I would ask you to pass Bill 113. This is all respectfully submitted. Thank you very much, Madam Chair.

**The Chair:** Thank you, Mr Gorrie. Are there questions of Mr Gorrie?

**Mr Dave Levac (Brant):** Ron, I know that this particular issue is near and dear to your heart and I respect and admire your ability to vocalize that.

I also suggest to you, and I would say so in a very non-partisan way, that this was an evolution that has been taking place in the last little while, and I commend and thank Mr Wood for bringing this forward in this manner. We've discussed this in a very personal way. I've sent letters to the minister outlining some of the things that I thought were appropriate at the time, giving full support of our firefighters across the province, both volunteer and professional, and those who work in a peripheral way around that.

Within your own organization I know there's been some discussions regarding this particular issue, so I'll stay focused on this issue. In terms of your offering of support, has that been after the dialogue that I know took place and you're satisfied that this is an appropriate opportunity for us?

**Mr Gorrie:** Exactly that: our association passed a number of resolutions at convention looking for a memorial at Queen's Park to honour fallen firefighters in the province. We believe that the format that's been adopted and proposed through previous meetings will be more than appropriate and will have the full support of the members of the Ontario Professional Fire Fighters Association.

1540

**Mr Levac:** Madam Chair, if I may continue, there's a couple of quick questions I will ask. Were you aware that this evolution started before September 11?

**Mr Gorrie:** Yes I am, and I certainly appreciate that. As we all know, September 11 brought a lot of attention to the people in my profession, and the dedication and the service there. I think it's so great that we can point to the fact that the evolution of creating a memorial started pre-September 11. If you will, it speaks well for the members of the Legislature and this committee who have advanced that particular memorial.

**Mr Levac:** I would also like to offer my compliments and congratulations to Mr Wood on the way in which he proceeded. I know that process is important to him in terms of the involvement of all the people he has kept in the loop. I put that on the record to offer to Mr Wood. I thank him for that. He also listened carefully to some of the concerns that were raised, and in doing so, shows that the committee is the right place to do an awful lot of this work. I do support him in his venture in that particular story. Finally, a compliment to the firefighters, and in particular, I'd like to offer it to the families and friends of

those who so willingly allow this gift to take place, because I know it's a very large hurt for them as well.

This is nothing but good news for our firefighters in the province of Ontario.

**The Chair:** Further questions?

**Mr Wood:** I wanted to make an observation. I think we as Canadians tend to be poor about celebrating who we were and who we are. That has an implication for the future, as you pointed out in your submission. I'd like to invite you and everyone interested in this bill, once this is done, as I'm quite convinced it will be done within perhaps six months—once this is done I hope we'll think about how we can make sure that all 12 million people in this province know about it and visit it. I think they're going to become better citizens and we're going to become a better province as a result of it. I issue that to you as an invitation. I really have no questions as such because I thought you put the whole case very well. Thank you for coming and thank you for your help.

Just for Mr Levac's information, which I don't think I shared with him earlier, I wrote to fire services and firefighters across the province and we heard back from about 70 of them. A couple actually didn't feel this was the right thing to do, but almost all of them did. We got a lot of good input from across the province, so I want to publicly acknowledge them as well.

I'm not going to get into the discussion of parliamentary reform, which is near and dear to my heart; I'm staying away from that. But feel free to come back to this committee later, because we're discussing that as well.

Those were my questions. I think Mr Maves may have a question.

**Mr Bart Maves (Niagara Falls):** Mr Gorrie, thank you for the presentation. This answer has probably been already given, perhaps even by Mr Wood in the Legislature, but I wasn't available for it. Does the association have a good indication of how many firefighters have lost their lives in the line of duty?

**Mr Gorrie:** I apologize for being ignorant of the number, but I can guarantee that the next speaker will be able to give you almost a precise number. I suggest respectfully that that would be a more appropriate question for him.

**The Chair:** No further speakers? Thank you again very much, Mr Gorrie, for your contribution this afternoon.

ROBERT KIRKPATRICK

**The Chair:** I would invite Mr Robert Kirkpatrick, who is a captain in the Mississauga Fire and Emergency Services. Welcome, Mr Kirkpatrick.

**Mr Robert Kirkpatrick:** Thank you for having me today, honourable members, Chair Marland. For those of you who don't know, my name is Robert Kirkpatrick. I am a captain with the Mississauga Fire and Emergency Services and the author of the recently published book, *Their Last Alarm: Honouring Ontario's Firefighters*. Initiated in 1996 by what I felt was a lack of recognition,



this book chronicles the stories of 300 Ontario firefighters who died in the performance of their duties and, as the honourable Lincoln Alexander says in the foreword, "was long overdue." During my initial research, to my surprise I found that no government agency had a historical record of Ontario's fallen firefighters and no official memorial was in place.

Today I am speaking to you on the importance of Bill 113, the Firefighters' Memorial Act, and the successful building of an official government memorial to Ontario's fallen firefighters, which I too feel is long overdue.

Every day in Ontario, whether full-time or volunteer, firefighters are prepared to risk their lives for the benefit of their community and its citizens. Why they do it is not clear. Certainly they don't do it for financial gain. No firefighter is thinking of getting killed when they answer an alarm. They are there to put the fire out or to rescue victims. Firefighters do not regard themselves as heroes; they do what the job requires. When they answer the alarm and risk their lives in some kind of action, it usually goes by with little fanfare—part of the job—until a death occurs.

From William Thornton, who died from an injury sustained while fighting a fire in Toronto in 1848, when Ontario was known as Canada West, to April Hopkin, who died while responding to a call just last month north of Sault Ste Marie, firefighters in this province have suffered great losses. They have died in many ways: smoke inhalation, burns, falls, building collapses, drowning, vehicle accidents, explosions and heart attacks caused by stress. They have also died from work-related illnesses most likely caused by exposure to smoke-related chemicals over their long careers.

Historically, volunteer firefighters in the province were the guardians of their towns, protecting their citizens from the ravages of fire, performing heroic acts and often being injured or killed without compensation. Many firefighter deaths have contributed to the stringent regulations found in Ontario's building and fire codes developed in the 1970s. Inquests into their deaths has led to better equipment and procedures within the fire service and, unlike earlier times, safer buildings in which to operate when a fire does occur. But nowhere in these regulations will you find the name of the firefighter fatality that led to a change.

The name of Toronto fire captain George Stevens is nowhere to be found when learning that designated elevators in a high-rise building must have a separate firefighter control and be enclosed in a pressurized shaft. Captain Stevens died in 1966 when the elevator malfunctioned and opened on the fire floor. Nowhere in the Ministry of Labour's guidelines for firefighters on ice rescue will you find the name of Cornwall firefighter Roland Larochelle, who became the first Ontario firefighter to drown while trying to rescue someone on the St Lawrence River in 1964.

The job hasn't changed much in 160 years and today they are still called upon to save lives and property. They are most often a victim's last resort. Many have died trying.

In 1870, firefighter William Reeks of St Thomas died when a burning building collapsed while trying to rescue the valuables of the homeowner. The fire hoses were frozen. His name is not on a memorial. In 1914, Stratford fire chief Hugh Durkin was killed when the burning steeple of a church fell and buried him. His name is not on a memorial. In 1922, Haileybury firefighter Gervais Sutherland gave up his spot in a fleeing car for two small children, only to face certain death in his town's conflagration. His name is not on a memorial. In 1941, Ottawa firefighter William Morin was killed responding to a call when his truck was involved in an accident. His name is not on a memorial. In 1955, Captain Jack Wilson of Windsor collapsed and later died from smoke inhalation while rushing into a burning house to rescue a child. His name is not on a memorial. In 1965, Peterborough firefighter Elton Bannon died in a building fire while searching for victims. His name is not on a memorial. In 1990, Port Colborne firefighter Harry Chevallier died in an attempt to rescue drowning victims in Lake Erie. His name is not on a memorial.

These are just some of the over 300 reasons this government needs to permanently recognize the sacrifice made by these fallen firefighters. Other than a memorial at the Ontario Fire College that has no names on it, this group of fallen firefighters are remembered nowhere else collectively. Due to its location, the memorial, located at the fire college in Gravenhurst, is usually only seen by firefighters and not the general public or the families of the fallen.

A memorial such as the one proposed in Bill 113 would bring a fitting tribute to this group to a location where many more will see it and remind them of the sacrifices made for the safety of the province. It only makes sense that a memorial to Ontario's fallen firefighters be built near the capital of the province they died serving.

#### 1550

It is also fitting that such a memorial have the names of all fallen firefighters inscribed on it for all to see. While assisting with the Toronto fire services memorial and interviewing many relatives of the fallen, it was strongly evident that a memorial is much more significant if it has a name attached to it. The relatives of these brave firefighters were quite moved, as the names carved in stone will remain forever and show that their sacrifice will not be forgotten. I feel it is the least the citizens of Ontario can give the surviving relatives who have suffered a great loss.

Unlike their counterparts in the police services, the cause of many firefighter fatalities is not precise and is the topic of great debate to this day. Many organizations and municipalities have varied definitions of a line-of-duty death. While many firefighters died while in the performance of their duties responding to, at the scene, or returning from an emergency, many died later from illnesses caused by years of firefighting or a single exposure to unknown chemicals. These deaths fall into what some refer to as a grey area and are recognized as

line-of-duty deaths by some organizations and not by others.

Should the name of a firefighter who reached normal retirement age and has died after years of exposure to smoke, before efficient breathing apparatus was available, be included alongside a firefighter who died in a burning building collapse? Should the name of a firefighter who dies from a cancer any citizen can contract be included beside the name of a firefighter who drowns while trying to rescue people? Many colleagues of these firefighters are in disagreement, as you cannot be 100% sure the illness was caused by firefighting and they feel it might lessen the significance of the sacrifice made in an obvious line-of-duty death.

As you can see, firefighter fatalities fall into two categories: those who died in a direct action while in the performance of their duty and those who died from a work-related illness. The criteria for inclusion in such a significant memorial must be thoroughly considered. I hope that both these types of deaths can somehow be included.

These firefighters, who have mostly been forgotten with the passage of time, deserve official recognition from the government. The passing of Bill 113 will finally put and end to that. Thank you for your time.

**The Chair:** Thank you, Captain Kirkpatrick.

**Mr Michael Prue (Beaches-East York):** These are all very moving. I can't think of anything to question. I have lots of comments but I think I'll save those until later.

**Mrs Julia Munro (York North):** I just want to offer my personal comments to you in undertaking what I think is a most important task and certainly one that I'm sure, in doing the research, must have been at times very painful. I think your efforts underline the importance of what we are looking at today in embarking on a permanent memorial.

As you were speaking and relaying some of those tragic stories of the individuals who died, it certainly crossed my mind the importance that many of us understand in the way that heroes are portrayed, and I think what you have uncovered for us, as people of this province, is 300 heroes. It's certainly something that needs the kind of permanent recognition that your work as an author has done, but also obviously in a memorial that people will be able to come to, see and appreciate. I want to thank you for the work you've done and the support you're providing today.

**Mr Kirkpatrick:** Thank you.

**Mr Wood:** You probably are the most knowledgeable person in Ontario or the world about the stories behind the 300 names we're going to have on the memorial and I hope that you will consider the invitation I offered a couple of minutes ago about thinking of ways in which we can promote this to the 12 million people of Ontario. I don't know whether you've given any thought to that already and have something that you want to put on the record today or you'd rather digest that and think about it later.

**Mr Kirkpatrick:** I'll certainly let you know if I come up with anything.

**Mr Wood:** Let me suggest one thing that is interesting, and I'll try and be very brief. When they liberated Paris in the latter stage of the Second World War, there was a revolt of partisans within Paris and quite a few were killed in the course of that revolt, which helped free the city. They memorialized each one individually in the place where they fell throughout the city. Do you think that would have any merit, if we were to memorialize firefighters where they fell? In Paris, they simply have the name, the date and "Died for France." You could actually do more than that. You could have the circumstances. As an off-the-cuff reaction, do you think that is something we should look at, or do you see that as being problematic?

**Mr Kirkpatrick:** That would take a lot of space, but—

**Mr Wood:** No, I'm talking about—the memorial is going to be in London. If they died in London or they died in Sault Ste Marie or wherever, the memorial is actually there with a reference to the memorial at Queen's Park—there's a little explanation right where it happened.

**Mr Kirkpatrick:** You mean like an Ontario historical plaque kind of thing?

**Mr Wood:** Yes, exactly.

**Mr Kirkpatrick:** I think that would be great, yes.

**Mr Wood:** Give it some thought. That's one way that we could consider promoting—

**Mr Kirkpatrick:** Certainly for the more significant incidents, but if it's significant, most communities certainly have something. For example, down near the Humber River they have a memorial plaque for the five volunteers who died in Hurricane Hazel. However, five firefighters died in the early 1980s out near Belleville, and I don't believe there's anything where the incident happened; certainly there's something at the fire station. But, yes, that would be something worth considering.

**The Chair:** Mr Maves?

**Mr Maves:** Thank you, Captain Kirkpatrick, for your presentation. You did indeed answer the question I asked of Mr Gorrie. The number of firefighters that your research showed—300-plus—how far back does that go?

**Mr Kirkpatrick:** The first one I found was in 1848 in Toronto. I should say that since the book came out in June, there have been several names that will need to be added to it. The book, as it is right now, has 297 names in it.

The other problem that came up was that I was relying on information given to me by other municipalities and organizations, so if I didn't get a reply from a community, I wouldn't know that it happened. Since the book has come out, I have been made aware of some others. I would have to say that the number is probably closer to 325 known at this time. There might be more.

**Mr Maves:** You pointed out the difficulty of a definition of a line-of-duty death. First, do you have a definition that you would prefer to see us use, and



second, do you have any advice on how we should go about reaching a definition we can use?

**Mr Kirkpatrick:** I think you just have to pick one and stick to it. I know the international firefighters' association has a specific definition of a line-of-duty death. It will include whatever illnesses the WSIB considers as work-related at this time.

Unfortunately, if you're going back over time, there could be a lot more that were caused by these illnesses back in the 1920s and 1930s that weren't recognized at the time. Some deaths that would be recorded now weren't recorded back then. Where are you going to draw the line? That's the big question.

**The Chair:** Ms Mushinski?

**Ms Marilyn Mushinski (Scarborough Centre):**

Actually, Mr Maves asked the question I was going to ask you. It was really within the context of 9/11 and the aftermath of that in terms of firefighters who actually survived that disaster, and if there are any guidelines or principles as to how we can make sure that those who have died of duty-related injuries or illnesses can be included in this, and if any new definitions or guidelines have been drafted since the events of 9/11?

**Mr Kirkpatrick:** I don't know of that. Perhaps Mr Gorrie would have a better answer on that. In regard to 9/11, I can tell you, just semi-related to what you're asking, that I spent five years researching the book and tried for a year and a half to get a publisher. I finally got one, and it was really hard to get one. After September 11 there were lots of people who wanted to publish the book.

**Ms Mushinski:** I'm sure there were.

**Mr Kirkpatrick:** So I stuck with the person who thought it was worthwhile before.

**Ms Mushinski:** Thank you for your presentation, by the way.

1600

**The Chair:** That's all the questions. Thank you.

Oh, sorry, Captain Kirkpatrick, Mr Levac has a question.

**Mr Levac:** I'm so unassuming. I want to thank you for your presentation and thank you very much for your research. Where can I get a copy of your book? Is it online?

**Mr Kirkpatrick:** At Chapters, but I believe there are only around 100 copies left, so you'd better hurry.

**Mr Levac:** They'll go fast. A second edition would be very warranted.

In my visitation to New York regarding 9/11 and also in the province's ceremonies with the police officers' memorial day, both of them have indicated that they, with their committees, continue to research and look at the addition of names of people who were passed over or at changed definitions. So I can assume that when we have these discussions, Mr Wood and other people will be making sure those additions can be taking place on a regular basis, because I know they do it with the police officers' memorial. I think they added two new names from back in the 1800s two years ago or last year. I

would just point out that that is a possibility, and I'm sure we could dedicate ourselves to make sure those things happen.

You're aware that when I introduced Bill 107 there wasn't even an actual legislated day to have them memorialized. Bill 107, when I researched, indicated that we did have the first Sunday of every October, but that wasn't even classified as a legitimate day. So we've now memorialized it permanently, and I believe we're going to be doing the same thing with this bill. We're making it a legitimate, legalized memorial, and with that comes the responsibility of the creation of a committee of some sort. So I'm sure, I'm absolutely convinced, that we will be able to pick up an awful lot of the people you've immortalized in your book.

A quick question for you—when asked about the future, there have already been some ideas floated. In terms of feedback from this, is there a registry now? As the result of your book, is there a registry from people who want to input?

**Mr Kirkpatrick:** People have been phoning me and they've contacted the publisher; that's the only way. I think I've been notified about three names since July, which I've been investigating for a possible second printing that looks like it will happen.

**Mr Levac:** I would refer that to Mr Wood in terms of its being another idea, the possibility of the creation of a registry. As this starts to happen, people will be stepping forward. So if we can create for the future—we were talking about ideas to memorialize that—Web sites that have a registry of people we need to investigate and those who are already on the memorial.

I offer you my thanks, and absolutely know, for the personal contact, that someone was virtually in tears in their conversation with me thanking you for your research. I want to pass that on to you.

**Mr Kirkpatrick:** Thanks very much.

**The Chair:** Thank you again, Captain Kirkpatrick.

## ONTARIO ASSOCIATION OF FIRE CHIEFS

**The Chair:** Our next deputation is Chief Lee Grant, the Ontario Association of Fire Chiefs representative.

**Mr Lee Grant:** Thank you, Chair Marland. The Ontario Association of Fire Chiefs appreciates the opportunity to provide our organization's comments regarding Bill 113, the Firefighters' Memorial Act, 2002.

The Ontario Association of Fire Chiefs represents the full-time, composite and volunteer administrative levels of the Ontario fire service from a fire protection and prevention/education management perspective. Currently the OAFIC has approximately 600 members representing over 400 fire service organizations across the province. Membership is comprised of full-time departments, protecting 55% of our population; composite departments, protecting 30% of the population; and volunteer fire departments, representing approximately 15% of our population.

Ontario fire chiefs are extremely proud to see a memorial being built on the grounds of Queen's Park. This is the political heart of Ontario, and thousands of citizens regularly pass through the park every week.

This monument is a very important recognition of the sacrifice made by all firefighters in Ontario, past and present, to support their communities. The Ontario Association of Fire Chiefs is honoured to join all firefighters in Ontario in supporting the construction of this memorial to the memory of those brave firefighters who gave their lives to protect life and property.

The Ontario Association of Fire Chiefs would like to thank the Honourable Robert Runciman and the Ontario government for its support in providing \$500,000 toward the construction of this memorial. As an association we would be pleased to be part of the working group to guide and manage the construction and ongoing maintenance of this memorial.

The Ontario Association of Fire Chiefs is prepared to be one of the founding members of the foundation necessary to allow for the construction and ongoing maintenance of this important monument.

It is the hope of the Ontario Association of Fire Chiefs that the Fire Fighters Association of Ontario and the Ontario Professional Fire Fighters Association will join us to initiate the foundation which will be required to allow for fundraising to complete the monument and to ensure its ongoing maintenance. During preliminary meetings of the working group, it has become apparent that the total costs of designing, sculpting and erecting this new monument may well exceed the funds currently allocated by the government.

The Ontario Association of Fire Chiefs requests the Ontario government to continue to support this important initiative and to favourably consider additional funding of this project if it is required and requested by the foundation in the future.

The Ontario Association of Fire Chiefs would like to thank MPP Bob Wood for initiating the private member's Bill 113 and the Honourable Robert Runciman for his support of the project to date.

In closing, the Ontario Association of Fire Chiefs would ask the support of the standing committee on the Legislative Assembly to support Bill 113 as it is written and forward it to the Legislature for third reading.

Just before I answer questions I might suggest that we have a working group of stakeholders. That might be an excellent spot for a definition of who might be placed on that monument to come from, as a place to start. In fact, there have been some small preliminary discussions surrounding that. I optimistically believe it will be fairly straightforward to come to an agreement on that.

My second observation is that for recent firefighter deaths we have a fairly good registry of those who are felt to be firefighter deaths by the workers' insurance board. So we do have a spot in Ontario where we can find later deaths. I do agree it's going to be difficult to pinpoint earlier ones.

**The Chair:** Thank you, Chief Grant. That's a helpful suggestion that you've just made. I didn't mention in

introducing Chief Grant—it isn't on our agenda—he is the second vice-president of the Ontario Association of Fire Chiefs. We have questions starting with the government members.

**Mr Wood:** I want to reiterate my invitation to you and your association to consider ways of promoting this once it gets done, as I think it will get done. I hope the working group, which I guess is going to turn into a foundation in due course, will consider what we hear today.

This has been open to the public, it has been advertised to the public and I think we've had a number of good ideas from quite well-qualified people. I hope that group—whatever may be on it—will take a look at the transcript of this hearing so they can have the benefit of the very good ideas that were put forward by the public today.

Other than those observations, I guess I would invite you to comment on the question I asked the last presenter about the memorials. Do you see any merit in—perhaps in an organized way and I would think with the support of the family of the person who'd passed away—having those memorials throughout the province?

**Mr Grant:** Yes, I do. I think that is a very appropriate way to consider personalizing the memorial of these people and making their own communities more aware. As in many places, in the city of Peterborough we have our fallen firefighters' memorial at our fire hall. But I would dare say that a very small percentage of our community is actually aware of the names of the individuals and the circumstances under which that happened.

**Mr Wood:** Those are my questions.

1610

**Mr Maves:** Thank you, Chief, for your presentation. For the most part I would argue that money shall be no object in the creation of this memorial. I do note that—

**Mr Levac:** "Shall"?

**Mr Maves:** I do note that you said that the design, sculpting and erecting exceeds the funds currently—

**Mr Grant:** Yes.

**Mr Maves:** Do you have a price tag that we've come up with to date?

**Mr Grant:** I do not, but in preliminary discussions, because of the location and the fact that it's above a subway system and a few other things, the indication we got from the designers is that it may approach closer to \$750,000. But that is very preliminary, based on the way the model looked and what they believed they were likely to run into when they started breaking ground.

**Mr Maves:** I sit on Management Board, so it's relevant to me. Thank you very much.

**Mr Levac:** I still like the word "shall."

**Ms Mushinski:** That's because we spent the hours debating it.

**Mr Levac:** That "shall" was nice, I liked that one.

The foundation, I think, in the police memorial dedicated the appropriate amount of money to ensure that the monument was established.



I won't say "shall," but I'm guessing we will be able to get the commitment from at least what the foundation is requesting. So I do support your observation that the money is now needed, fine. As our fundraising proceeds and our numbers start to roll in, I think it's appropriate to go back to the government and, as indicated by Mr Maves, their ears would definitely be very wide open to hear that this gets done. I would support that.

Chief, I'm just wondering if there is any other avenue that you believe has not been covered? Obviously the support from your association has been there from the beginning and is evident. Is there any other avenue that you discussed in your group that maybe something didn't get hit? I like to ask those questions not as a criticism of the bill but as, "What happens if we didn't cover this off?" Is there anything that you've come across?

**Mr Grant:** Our association discussed this at both the executive board level and a general meeting of our membership that was held just in this last week. There was unanimous support and no reservations on the part of over 140 members who were in the room.

I believe that between your bill, which sets an appropriate date, and the creation of the monument, our membership is extremely pleased with the actions taking place at this time.

**Mr Levac:** In terms of feedback that I was seeking originally way back in 2000, it looked like there was beginning to be an understanding of the commitment of firefighters in the province of Ontario and that people across the board and across political lines were looking at a way in which we could elevate that. It was appreciated that it was understood, that people were beginning to pay attention. The fire marshal was asked for feedback. The chiefs were asked for feedback. I can only say in a positive way that I do agree with some of the statements that were made regarding its being overdue, but now that it's happening, I am so proud of the people who have been putting this together in terms of a non-partisan and "the right thing to do" kind of comment.

This is where most politicians actually gain a lot of the juice they need to have faith in the system again, because when we do pull our heads together and work on a common cause, it's the right thing to do.

To the families of your organization and to the members you represent, and their families, I want to congratulate you and thank again all those people who do that hard work, day in and day out. It's the right thing to do, and I'm so proud of what's been happening.

**Mr Grant:** Thank you.

**Mr Prue:** Sorry, I had to go outside. I just read this and the only question I have here is related to the fund for maintenance. Has there been a discussion? I need to understand what that is. That is surely not the maintenance of the grounds and the planting of flowers around it? Surely our staff in Queen's Park will be doing that?

**Mr Wood:** Could you raise that when we get to the discussion stage?

**Mr Prue:** But I want to know from you what you anticipate the maintenance to be. Is it the maintenance of

the stone itself? Because stone weathers and once in a while will need to be repaired. Or have you been told that it's maintenance of the grounds and the flowers around it?

**Mr Grant:** It is the working group's understanding that it is the maintenance of the monument itself and the cost of adding names and so on as the happenings occur.

**Mr Prue:** I think that's more than reasonable. I didn't want to see firefighters down here planting flowers and things to make it look nice. I think that's our job.

**The Chair:** No further questions, then. Thank you again, Chief Grant, for coming this afternoon.

Again, thank you to all the deputations. We appreciate very much both your input and your support.

We will now move to clause-by-clause consideration of Bill 113. First of all, are there any other comments, questions or amendments, and, if so, to which section?

**Mr Wood:** I have a few general comments I want to make which pertain to all the sections, so it would be in your hands as to when I might make those. I'd be happy to do it now; if you think it's better at a later stage in the proceedings, I'll do it later. I have a few comments that pertain to all sections of the bill.

**The Chair:** Why don't we move to section 1, which speaks to the purpose of the bill and the firefighters' memorial. Obviously the bill is An Act to honour firefighters who have died in the line of duty, and I think this would be an important position in the process for you to make those comments. Let's begin with section 1 and this will be the discussion.

**Mr Wood:** What I'd like to do is make a couple of points. When this building was conceived and designed some 110 years ago, the idea of it, as envisaged by the Premier, Sir Oliver Mowat, and all the other people who worked on it, was that it would show who we had been as a people, who we were as a people and the possibilities of the future. That was the vision for this building and these precincts. I think that was a sound vision and I think the building achieved that. I think it still does today what it was intended to do 110 years ago.

However, I think there are some important enhancements that we can do to achieve that mandate. One of them that has been done recently is of course the police memorial; another is this memorial. It enhances the ability of this building and these precincts to show who we were, who we are and the potential for who we can be. That really was my motivation in bringing this bill forward: to honour those who had made such a contribution to Ontario in the past and to show people how that has made us what we are today and what I think is a very great potential for the future.

The second observation I want to make is that I think we should pass this bill today and send it back to the Legislative Assembly and hopefully the Legislative Assembly itself will pass it. The procedure set out in this bill I would hope would be folded into the procedure that is currently being pursued. In other words, this is not intended as a two-track approach but rather a one-track, but what I think is quite important is that we have the

endorsement not just of the government but of the Legislature as a whole. So this is not just a government initiative, important and meritorious though that is; this is an initiative of all the representatives of the people of this province. So it is my intention, should this bill be passed, to encourage the Legislature to fold in—they can easily fold into the process that the government is now following to get this done as quickly as possible. That's my intention; my intention is not to duplicate what the government has done, but to enhance what the government has done and to give an endorsement by all members of the Legislature, hopefully, of what I think is a very important addition to our legislative precincts.

**The Chair:** Any other discussion? All right. I will now put the question. Shall section 1 carry? Section 1 is carried.

I think because of the simplicity of this bill, we will accept the discussion now on sections 2 to 5, unless anyone has any objection to proceeding with sections 2 to 5, and then discussion on any part therein, if that's agreeable to members.

Mr Levac, you had your hand up.

1620

**Mr Levac:** Not an objection, though; to speak to—

**The Chair:** That's fine, if you can just identify which of those sections you're speaking to.

**Mr Levac:** If I may defer to Mr Wood on this, regarding his statement earlier on rolling in the two processes, is there, on section 2, Bob, anything that the government is presently doing that would change and request, as you're doing, the role of the Board of Internal Economy? Are you aware of that?

**Mr Wood:** No. I don't want to advise the Board of Internal Economy, because they're a body unto themselves. I think it would be fairly simple for them to follow the provisions of this bill and establish a small group, perhaps of three MPPs, who would liaise and assist and give the Legislature's endorsement to what's being done. I think there's a fairly simple way of following the provisions of this bill which, should they seek my advice, I will offer. Obviously, if the bill passes, it's up to them to decide how they want to do it. I do have some thoughts as to how that should be done. I don't want to stick my nose in until I have some invitation to do so.

**Mr Levac:** Right. The reason for the question was to ensure that that path can be taken and that it's not going to be obstructed and if we need to do anything to break that down. I just made the assumption from your comments that you believe that it would be melted very easily and that there wouldn't be a problem.

**Mr Wood:** I think if it's done properly, which is not totally of course in my hands, this can be a further endorsement and a further impetus to getting done what's in progress already.

**Mr Levac:** The next question then would be: is it fair to say that the three MPPs you're mentioning would be from all parties or are you looking for the government to decide on who that would be?

**Mr Wood:** I want to be a little cautious about saying too much about how I think it should be done, because that's the Board of Internal Economy's function. Personally speaking, I think there is merit to having representation from all three parties on such a committee. However, I don't want to say too much.

**Mr Levac:** I understand.

**Mr Wood:** If we pass this bill, we are turning it over to the Board of Internal Economy. Should they ask for my advice, I will be more than pleased to give it. I think there's a simple, workable model that will enhance this process, give it more momentum and give it the endorsement of the whole Legislature, but the details of that, any advice that might be sought from me, I would prefer to leave to the Board of Internal Economy. I do have some thoughts on it; I don't want to get too far along that road today.

**Mr Levac:** I appreciate the way in which you've been wording that.

I do want to pursue just a little bit more, because there have been other people working on the same process, outside of the government and into the realm of the Legislature, as you've described. I don't know that waiting for them to seek your advice—would it be fair to ask of you to provide your advice and then let them decide? Because I think what you've been doing, as complimentary as I've been, is purposeful, and I wouldn't want to see the vision that you have, as we've discussed privately, removed simply because they didn't ask you, if you see where I'm coming from. It's not against any rules for you to offer your suggestion.

**Mr Wood:** They will have an obligation, should this bill pass, to follow the timelines of it. I intend, should the bill pass, to find out exactly what they're proposing to do, and should my advice be asked, I might well offer some suggestions as to how they might do it. I do not intend to drop out of this process should this bill pass. I'm going to find out from the board exactly how they intend to comply with the provisions of this bill.

**Mr Levac:** That's good.

**Mr Wood:** In fairness to the board, I think we should make contact with them. They may have better ideas than I do on how to do it. I am wedded to the proposition that I'd like to see this bill give increased momentum and increased endorsement to what's being done and, where appropriate, good ideas as to how it might be done. If they have a better idea of how to accomplish that, I'm not wedded to my own thoughts on that.

**Mr Levac:** Thank you very much for that clarification.

One final observation regarding, as Mr Wood did, the culmination of 2 to 5, I would suggest to the presenters and to the people they've represented that no one has had a monopoly on the goodwill that has been going on since 9/11. In one of my statements to the minister regarding the actions of the government versus the Legislature, I think it should be duly noted that members of all three parties—and that went beyond the three parties in terms even of ridings all over the province—have indicated



their desire to see that firefighters deserve the credit that unfortunately was not publicly given on occasion and that now all people have become more sensitive to the needs of firefighting in Ontario.

As I've said, and it is repeating, I don't know if Mr Wood's Bill 113 is the end result, but it's the final chapter of an ongoing evolution that's been taking place in signifying that our firefighters are appreciated by many people across the board and, in particular, the Legislature.

I want to thank you, Madam Chair, for that indulgence. I will be endorsing this bill completely.

**The Chair:** Is there any further discussion on sections 2 through 5? Shall those sections carry? They are carried.

Shall the preamble carry? That is carried.

Shall the title of the bill carry? Carried.

Shall Bill 113 carry? That is carried.

Shall I report the bill to the House? It will give me great pleasure on your behalf to do that.

**Mr Wood:** Might I thank the committee for scheduling this and being kind enough to hold public hearings as well on the bill. I appreciate the support to date of all members of the House and certainly all members of this committee.

I might indicate for the purpose of the record that I intend to invite all three parties to give unanimous consent so we can get early third reading of this bill and get the legislative endorsement behind what I think is a very worthy project. I hope I'll be able to convince all members of the House to give unanimous consent to an early third reading. Thank you to the committee.

**The Chair:** We have completed dealing with Bill 113 this afternoon. I'm at the direction of the committee in terms of whether you wish to revert to discussion of the draft report we had submitted to us.

I would also like to thank Mr Michael Wood, who has just left, who was legislative counsel sitting with us this afternoon. I also want to thank Ms Anne Stokes, who is here this afternoon on behalf of Mr Doug Arnott, who had a personal situation that took him away from our committee this afternoon.

What is the wish of the committee? Do you wish to adjourn today? If we do, before we adjourn, we have to discuss—and this is a suggestion that I take very well from Mr Doug Arnott, our regular clerk. One thing we should decide today is that we recognize that next Thursday, the 28th, is the last date for final approval to ensure the readiness of our report, that it can be translated and printed for presentation to the House by the last week, which begins December 9. I need your direction about whether you think, in hopefully two and a half hours, if we start by 3:30, we can complete the draft report next Thursday or whether in fact you need added meeting time in order to achieve that. I am at your direction.

1630

**Mr Maves:** We have a choice of finishing it on Thursday or passing legislation by unanimous consent.

That would give us two or three more weeks. Is that right?

**The Chair:** No, we don't, not if we wish to have this report presented to the House in this session, before we rise for Christmas, because of the time needed for printing and translation before we can present it to the House.

**Mrs Munro:** Just a question for clarification: should that not be feasible, from the standpoint of the committee, is it possible that the report then can be given to the clerk's office when the House is not sitting?

**The Chair:** Tabled with the clerk?

**Mrs Munro:** "Tabled," that was the word I was looking for.

**The Chair:** Committee members, you may recall that originally we were to report by the end of October and we received an extension which in fact said that we should report to the House, in answer to your question Ms Munro, and not just table the report with the clerk. We were to report to the House by December 12.

I think two weeks ago we had some discussion about how much time it took to get a report translated, as far as the final draft. I'm confident that Mr Sibenik would be able to get the report prepared in English, but it's the time needed for translation that is our impediment. We're very quickly approaching December and we are only sitting two weeks in December, if we are on schedule. So that's our dilemma.

**Mr Maves:** Why is it so important for us to get it done so that it gets reported to the House before the end of the session? If we complete it in January, why is that a bad thing?

**The Chair:** When this mandate was assigned to this committee to do this study and research—and I commend the members of the committee because you've worked very diligently at doing the research and study—we were actually ordered by a motion of the House that notwithstanding the order of the House dated October 15, 2001, the standing committee on the Legislative Assembly shall submit its report on the inquiry into parliamentary reforms to the assembly by no later than December 12, 2002.

**Mr Maves:** But that could be amended by unanimous consent, could it not?

**The Chair:** By what?

**Mr Maves:** By unanimous consent of the House.

**The Chair:** It would require another motion from the House. I would suggest that since this mandate is to look into enhancing the role of private members, I would suggest to the committee that we have sincerely a true obligation to fulfill the mandate we were given. I think that if we delay it until after the House has risen perhaps the effectiveness of the report is then given less time to be assigned to it.

**Mr Maves:** Then we need figure out a schedule.

**The Chair:** Today we did have two and a half hours. My question now is, if two and a half hours is insufficient, would you be willing to add some other time next week to meet, or would you be willing or is it possible

for you to consider sitting after 6 o'clock next Thursday, the 28th, if we're not complete? Perhaps that's—

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** Better to sit on the Wednesday. I can't sit late on Thursday. I'm prepared to meet earlier.

**The Chair:** All right. Are other members available on Wednesday? What time would you be proposing, Mr Tascona?

**Mr Tascona:** After question period, if we have to.

**The Chair:** Mr Arnott and Ms Mushinski aren't here.

**Mr Prue:** That's not the answer. There's no one here from the Liberal Party. To be fair, we can't just do that.

**Mr Tascona:** They could have stayed.

**The Chair:** With respect, Mr Prue, we need a quorum.

**Mr Prue:** I know. I'm not trying to be nasty, I'm just saying we just can't arbitrarily say Wednesday. What I'm trying to suggest, Madam Chair, is—

**The Chair:** Let me answer your question. Mr Duncan is available now. He informed the clerk that if we moved

back into the report this afternoon—and it's now 4:35—he would be willing to come back into the committee, I understand.

**Clerk of the Committee (Ms Anne Stokes):** I believe so.

**Mr Tascona:** Let's do it.

**The Chair:** Do it now? OK, let's do it then.

**Mr Maves:** Can we have a 10-minute recess?

**The Chair:** All right. But do you want me to tell Mr Duncan we're going to proceed into the draft?

**Mr Maves:** Sure.

**The Chair:** OK.

**Mr Tascona:** I haven't got a draft, by the way.

**Mr Maves:** I got mine today.

*Interjections.*

**Mrs Munro:** Are we taking a recess?

**The Chair:** Yes, we will have a 10-minute recess till 4:45.

*The committee continued in closed session at 1636.*











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